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Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum

Mission to India*

Summary

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, on her visit to India from 22 April to 1 May 2013. In the report, the Special Rapporteur examines violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State's responses and provides recommendations.

* The summary is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission only.

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Annex

[English only]

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to India (22 April–1 May 2013)

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I. Introduction

1. At the invitation of the Government of India, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, conducted an official visit to that country from 22 April to 1 May 2013.

2. The Special Rapporteur would like to thank the Government for its invitation. She appreciates the opportunity provided to assess the situation directly. In New Delhi, consultations were held with officials of the Ministry of Women and Child Development, the Ministry of Home Affairs, the Ministry of Health and Family Welfare, the Ministry of Labour and Employment, the Ministry of External Affairs and the Delhi Police. The Special Rapporteur also met with the chief secretaries and State officials in Rajasthan, Gujarat and Manipur. She also held meetings with officials from the National Mission for the Empowerment of Women, the National Commission for Women and the National Human Rights Commission. The Special Rapporteur regrets that, despite her specific requests prior to and during the mission, no visits to State-run shelters, prisons or detention centres were programmed. She also regrets that no meeting was arranged with the Committee on Amendments to Criminal Law (Verma Committee).

3. The Special Rapporteur consulted extensively with civil society and victims in various locations within the country.

4. The Special Rapporteur is grateful to the United Nations country team for its support prior to and during her visit. She is grateful to all interlocutors, including survivors of violence who shared their experiences with her. She looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of her recommendations.

5. The Special Rapporteur's mission was underpinned by knowledge of the ongoing struggle in India for women's rights and its present complexities. The establishment of self-governance during the colonial period was influenced by the leadership of Mahatma Gandhi, whose discourse included the need to address recurrent issues affecting women in India, such as caste-based discrimination, harmful customary and religious practices and sexual violence. The historical struggle against patriarchy was also shaped by the role of the women's rights movements in exposing the root causes of inequality, discrimination and violence against women.

6. While due recognition of the complexities inherent to the country's size and diversity need to be taken into account, it is imperative that those are not used to explain, defend or justify violence against women or the failure to address it.

II. Manifestations of violence against women and girls, its causes and consequences

7. Violence against women in India is systematic and occurs in the public and private spheres. It is underpinned by the persistence of patriarchal social norms and inter- and intra-gender hierarchies. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. That exposes many to a continuum of violence throughout the life cycle, commonly referred to as existing "from the womb to the tomb". The manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India.

A. Violence against women in the family

8. According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The widespread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social exclusion and marginalization, and the lack of effective responses to violence, keeps them in a context of continuous violence and intimidation.

9. Violence and killings linked to dowry payments are alarming across the country. Data from the National Crime Records Bureau reflect an increasing trend of crimes reported under the Dowry Prohibition Act since 2008, and a significant increase in such crimes since 2010.[1] Marriage is often used by the husband and/or his family to obtain property or other assets from the wife and/or her family, either directly or indirectly. While its practice has evolved through time, the payment of dowry today is based on the idea that women are a burden. It is also commonly considered to be crucial to ensure the safety of the bride, especially within poor communities. Despite the payment of dowry, many women and girls find themselves forced into a life of servitude and experience repeated acts of harassment, intimidation, sexual abuse and violence by their husbands and other family members as part of demands for more dowry.

10. "Honour crimes" are usually perpetrated by family members, often with the complicity of community leaders. Reasons range from a woman's refusal to be forced into marriage and retaliation for marrying the man of her choice, to refusal to follow prescribed and expected dress codes. Women and girls suffer a wide range of physical and psychological abuse and the denial of basic freedom of movement and expression, and are sometimes killed in the name of "honour".

11. Customary practices in the family and community point to a pattern of daughter aversion and son preference. Research has documented a trend of declining girl-child sex ratio from 962 per 1,000 males in 1981, to 945 in 1991, to 927 in 2001, to 914 in 2011.[2] Patriarchal norms and socioeconomic factors have reportedly fuelled the decline. The desire for sons has led to a "policing" of pregnancies by spouses and families through prenatal monitoring systems. The results can lead to sex-selective abortions, which are often forced on women in violation of their sexual and reproductive rights. Despite specific legislation to address this problem,[3] including stringent measures in case of contravention, there is a continuing prevalence of sex-selection practices in some states. Furthermore, some of those measures are perceived as the State policing pregnancies broadly and violating women's sexual and reproductive choices.

B. Violence against women in the community

12. Sexual violence, including rape and sexual harassment, is widespread across the country and perpetrated in public and private spaces. According to the National Crime

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[1] India, National Crime Records Bureau, *Crime in India 2012: Statistics* (2013), p. 81, table 5(A).

[2] United Nations Children's Fund (UNICEF), *The Situation of Children in India: A Profile* (2011), p. 36.

[3] Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, amended in 2003.

Records Bureau, in 2012, 2.84 cases of rape were reported every hour.[4] Many interlocutors stated that there was a general sense of insecurity for women in public spaces, especially in urban settings. Women are easy targets of attacks, including sexual violence, whether while using public transportation or sanitation facilities or on the way to collect wood and water. Many victims of sexual violence carry a deep sense of shame, which is further exacerbated by the stigma and exclusion they experience, especially from family members and the community, and which may result in suicide.

13. With regard to early and/or forced marriages, the implementation of the Prohibition of Child Marriage Act, 2006 has resulted in some reduction in the overall percentage of early marriages.[5] However, the high prevalence of such marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.

14. The Special Rapporteur was informed about the high incidence of acid attacks on women in the country, despite the development of new legislative measures.[6] Victims of acid attacks are predominantly women who challenge patriarchal norms, including by opposing a marriage or partner proposal.[7] The disfiguring of the victim's face and body forces the survivors to live in stigma, shame and exclusion. It also creates a climate of fear for other women as regards the consequences of failing to abide by and respect traditional practices and roles.

15. Violence against various groups is also of concern. Dalit and Adivasi women and women from other scheduled castes and tribes and other "backward classes" are frequent victims of multiple and intersecting forms of discrimination, as well as violence. Caste-based discrimination, which also includes intra-caste hierarchies, continues to be pervasive and widespread. The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life. Many of those women are denied an education and economic opportunities, and perform dangerous and unprotected work, including bonded labour (debt bondage) and manual scavenging, which are both widely regarded as forms of forced labour and modern forms of slavery. Women represent the vast majority of manual scavengers in the country, and are commonly from scheduled castes and minority groups. While legislation has been adopted to eradicate bonded labour and manual scavenging,[8] reports and interlocutors indicate that there is a consistent failure in the implementation of such laws[9] and a tendency to minimize the significance of the problem.

16. Numerous testimonies shared on recurrent episodes of communal violence against religious minorities, including Muslims and Christians, reflect a deep sense of insecurity and trauma of women living in those communities. Experiences included women being

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[4] India, *Crime in India*, snapshots, p. 6.

[5] UNICEF, *The Situation of Children*, p. 31.

[6] Criminal Law (Amendment) Act, 2013, amendment of section 100 of the Penal Code.

[7] Avon Global Center for Women and Justice at Cornell Law School et al., "Combating acid violence in Bangladesh, India and Cambodia" (2011), p. 3. Available from http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/AvonGlobalCenterforWomenandJustice.pdf.

[8] The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, superseding the The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and the Bonded Labour System (Abolition) Act, 1976.

[9] Ravi S. Srivastava, "Bonded labour in India: its incidence and patterns", International Labour Organization working paper (2005), p. 35; and International Dalit Solidarity Network, "Manual scavenging", briefing paper (2012), p. 1.

stripped, burned, attacked with objects inserted into their vaginas and sexually assaulted in myriad ways because of their religious identity. It was reported that perpetrators of those crimes usually held positions of authority and often went unpunished. Further, those minorities are allegedly excluded from access to education, employment and adequate housing on equal terms with other citizens, despite the existence of affirmative action schemes and measures by the Ministry of Minority Affairs and the National Commission for Minorities aimed at empowering minority women through the provision of knowledge, tools and training.

17. Women employed as domestic workers are often irregular migrants and unregistered women who operate in a poorly regulated labour market and who are usually considered as belonging to the bottom of a social class. They become easy targets for abusive employers, who force them to work long hours in return for low salaries and often deduct amounts for leave days taken. Many are prevented from using the employer's sanitary facilities and are forced to defecate and bathe in public, and are subjected to various forms of harassment and violence. Many women are primary breadwinners, either as a result of widowhood or unemployed spouses, and their low pay makes it difficult to assume financial responsibility, including for their children's health and education needs. Alcohol abuse by husbands was also reported to be a contributing factor to the violence many of those women experienced.

18. Women with disabilities face multiple challenges, including, for example, the lack of adequate access to public spaces, utilities and buildings, and often experience harassment in public. The Special Rapporteur was informed of a troubling practice whereby a payment incentive was offered, either as a State scheme or a dowry from the family, in exchange for marriage to a woman with disabilities. She was also informed of violence perpetrated against women with disabilities in State-sponsored shelters.

19. Women in same-sex relationships and transgender women also confront violence and exclusion. Section 377 of the Penal Code criminalizes sexual activities "against the order of nature". This particularly affects the protection rights of lesbian and transgender women and has been used by parents as an excuse to prevent homosexuality in their families. The mere perception of different sexual orientation is sufficient to put people at risk of violence and is a contributory factor to the inability of the lesbian, gay, bisexual, transgender and intersex community to report cases of violence.[10]

20. Sex workers are exposed to a range of abuse, including physical attacks, and harassment by clients, family members, the community and State authorities. Many sex workers are forcibly detained and rehabilitated, and they also face a consistent lack of legal protection. Many face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases. A recent order of the Supreme Court of India took the position that a sex worker engaged in such work to survive and was "not leading a life of dignity".[11] In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons, and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs.

[10] In a recent decision, *Suresh Kumar Koushal and another* v. *Naz Foundation (India) Trust*, 2013, the Supreme Court, while setting aside the decision of the Delhi High Court on section 377 of the Indian Penal Code, ruled that the Parliament had to legislate on the issue and upheld section 377, as it still remained in the statutes of the country.

[11] See the order of the Supreme Court of India, criminal appeal No. 135 of 2010, *Budhadev Karmaskar* v. *State of West Bengal*, 2 August 2011, para. 12. Available from www.thehindu.com/multimedia/archive/00740/Supreme_Court_order_740930a.pdf.

21. Widows also face particular vulnerabilities, as they are often denied and dispossessed of property by their in-laws following the death of a spouse. In addition, social exclusion and poverty lead some widows to engage in sex work and prostitution, and their children to perform hazardous labour or beg on the streets.

22. The Special Rapporteur was also informed of brutal acts of violence against women, including executions, commonly referred to as "witch-hunting". The stigma that is attached to women who are labelled a "witch", and the rejection they experience within their communities, leads to various violations and is an obstacle to gaining access to justice. Such labelling affects family members across generations. There is reportedly little or no official investigation into such violations.

C. Violence against women condoned or perpetrated by the State

23. Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women's health, including psychological disorders such as post-traumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women's physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens.

24. Violence against women in custodial settings remains a concern. In 2012 there were 20 women's prisons and 21 centres for the rehabilitation of juvenile offenders.[12] Furthermore there are rehabilitation centres for sex workers. Women account for 4.4 per cent of all inmates in the country.[13] Women prisoners are scattered across the country, often in violation of international standards aimed at ensuring that those wishing to maintain family relationships during custody can do so.[14] Concerns were raised about a lack of adequate protective measures to ensure the safety of inmates, including from gender-related killings. In 2012, 55 deaths of female inmates were registered, of which eight were suicides.[15] There was also a reported lack of access to essential services, including medical care, for inmates due to limited resources.[16]

25. Women were also found to suffer violence in the context of forced evictions. The State's efforts to foster economic growth and implement development projects are allegedly often conducted without adequate consultations with affected communities, with the sole objective being one of economic growth at any cost. The consequences for women include being forced to live in insecure environments, displacement, the degradation of their environment, the loss of land and livelihoods and forcible evictions. Many victims are left without adequate relocation alternatives, forcing them to live in slums or on the streets. The Government's twelfth Five-Year Plan, 2012–2017 includes elements to improve housing

[12] India, National Crime Records Bureau, *Prison Statistics India 2012*, snapshots, p. i.
[13] Ibid.
[14] See article 79 of the Standard Minimum Rules for the Treatment of Prisoners.
[15] India, *Prison Statistics*, snapshots, p. ii.
[16] Ibid., pp. 140 and 152.

conditions through a new slum rehabilitation programme and schemes to assist States to improve livelihood opportunities in urban areas.[17]

26. The Special Rapporteur noted concerns with regard to profit-oriented microfinance institutions involving microfinance products for women, and the failure of the State to protect and prevent abuses. Vulnerable women reportedly receive multiple loans and are sold financial products with little or no information, and the unequal bargaining power between such institutions and clients is not addressed by regulation. Such practices result in over-indebtedness and the inability to pay back, which leads to harassment and threats and women being excluded from their families and communities. Some have reportedly committed suicide as a result of such abuse. It is unclear if the larger problem is a lack of, or inadequate, regulation of microfinance institutions.

D. Violence against women in the transnational sphere

27. Many women refugees and asylum seekers are unskilled workers who often perform hazardous labour in urban and informal settings. While access to education and health care is provided for free by the Government, access to livelihoods is still a challenge, particularly in urban or semi-urban areas. Many of those women earn low wages and are forced to live in small and overcrowded apartments, with a lack of access to basic sanitation in less developed urban settings. Such factors contribute to poor health conditions and other vulnerabilities. Language barriers often impede their ability to gain access to health care, education and the justice system. Despite improvements in criminal law and police procedures, women refugees and asylum seekers continue to voice safety concerns, as they are frequent targets of attacks and harassment by employers, landlords and community members in public and private spheres.

28. The trafficking of women and girls from, and to, India was reported as widespread. Disadvantaged women from minority groups, scheduled castes and tribes and the "backward castes" are usually the main victims. Young unskilled women are allegedly given false work promises, resulting in forced domestic servitude in foreign countries. Women who are trafficked and forced into prostitution are left unable to defend their rights, and lack access to rehabilitation and compensation for such crimes. This lack of protection and prioritization of the problem by the State has intensified the violence perpetrated against them by criminals or those involved in trafficking practices. The complicity of State officials in human trafficking was also reported as a concern. The Immoral Traffic (Prevention) Act, 1956 and its amendments[18] are reportedly more directed at safeguarding public moral than combating trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[17] *Twelfth Five-Year Plan (2012–2017): Economic Sectors*, p. 338. Available from http://planningcommission.gov.in.

[18] See also the new sections 370 and 370A of the Penal Code (2013). Trafficking is introduced under section 370, which establishes stringent prison terms of 7 to 10 years for anyone who "for the purpose of exploitation (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons".

III. Implications of inequality, discrimination and violence on women's enjoyment of their human rights

29. The protection of human rights has advanced significantly since India achieved independence. The adoption of the first democratic Constitution in 1949 marked progress towards developing a normative framework conducive to the protection of women's human rights. For the first time, the Constitution recognized freedoms and rights of women, strengthened the principle of equality between men and women and afforded legal protection to all, without discrimination on the basis of sex, among other criteria. It also allowed for affirmative action measures for women.

30. India has ratified numerous international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

31. At the national level, laws and policies have been put in place to prevent and respond to violence against women. These include the Penal Code, the Criminal Law (Amendment) Act 2013, the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013, the Protection of Women from Domestic Violence Act, 2005, the Indecent Representation of Women (Prohibition) Act, 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Dowry Prohibition Act, 1961, the Commission of Sati (Prevention) Act, 1961, the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Prohibition) Act of 1976, among others. Despite those positive developments, effective implementation of those laws and the allocation of financial resources to support their execution adequately is reportedly lacking in many instances.

A. Civil and political rights

32. In terms of women's participation in political and public affairs, significant challenges remain at both the national and local levels. According to the Inter-Parliamentary Union, India ranks 111th of 188 States in terms of women's participation in parliaments.[19] The Special Rapporteur was informed that a bill aimed at reserving one third of all seats for women in the lower house of the Parliament (the Lok Sabha) and the State legislative assemblies was still outstanding.[20] In terms of the judiciary, the proportion of female judges is very low.[21] At the local level, citizens may participate in community-level self-government institutions, named Gram Panchayats (village councils). The Special Rapporteur regrets that she was not able to engage directly with that sector of Government, despite her requests.

33. Measures have been put in place to ensure greater representation of women in positions of authority in village councils, including women belonging to marginalized groups. The Government has also piloted a programme for women Gram Panchayat representatives, who would serve as counsellors for women victims at the community level. Their main function is to facilitate information-sharing on issues relating to women, and

[19] Inter-Parliamentary Union, "World classification" (January 2014). Available from www.ipu.org/wmn-e/classif.htm.

[20] The Constitution (108th Amendment) Bill, 2008, known as the Women's Reservation Bill.

[21] For a list of Supreme Court and High Court judges, see http://doj.gov.in/?q=node/86.

forge interdepartmental links within states. However, there have been numerous allegations of abuse of authority by and patriarchal attitudes of women elected to Gram Panchayats (whether by choice or through coercive influences), and of abuse by community leaders, including members of the illegal[22] informal courts of the Khap Panchayats.

34. The lack of registration and the difficulty in obtaining an identity card were noted as impeding women's participation in public life, including their access to essential services. No information was available to ascertain the measures in place to address that problem.

35. Fair trial rights, equality before the law and equal protection of the law were affected by numerous challenges, beginning with the reporting of cases of violence against women to the police. Many interlocutors said that victims were often discouraged from reporting to the police and that many women did not file a complaint owing to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives are often sought, allegedly by police, family members or community leaders. Many interlocutors described the complete or partial absence of legal, housing, security and financial assistance measures for victims. To be able to officially report complaints and continue throughout the often lengthy judicial process in safety and with an adequate standard of living is not an option for many women.

36. The Special Rapporteur received information indicating that human rights defenders, including women's organizations, face numerous challenges, including harassment, intimidation and reprisals. Those concerns echo the findings contained in the 2011 report of the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55/Add.1), the 2012 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/23/47/Add.1 and Corr.1) and concerns voiced during the universal periodic review of India in 2012.

B. Economic rights and the right to development

37. India recently underwent a significant wave of reforms to liberalize its economy, which has resulted in unprecedented growth and prosperity. Economic growth reportedly constitutes an overriding priority in the run-up to the May 2014 general elections. The country's twelfth Five-Year Plan, 2012–2017 is focused on economic sustainability and is aimed at making such growth irreversible. Unfortunately, the economic development focus for women remains one of subsistence and does not necessarily take into account, or address sufficiently, the gendered and class nature of systemic and structural inequality and discrimination. Gender budgeting, as a tool to establish gender differential impacts and to ensure that gender commitments are translated into budgetary commitments, was highlighted by the Ministry of Women and Child Development.[23] However, its implementation across the country is not consistent.

38. Whereas the participation of all citizens in the economy is considerable, women's labour force participation is significantly lower, at 25.7 per cent, as compared to men, at 77.4 per cent.[24] Moreover, job opportunities for women are in decline.[25] Women are also

[22] See India, Governance Knowledge Centre, "Supreme Court accepts recommendation to ban Khap Panchayats", 12 November 2012. Available from http://indiagovernance.gov.in/news.php?id=1816.

[23] India, Ministry of Women and Child Development, "Budgeting for gender equity", http://wcd.nic.in/.

[24] India, Ministry of Labour and Employment, "Report on the Second Annual Employment and Unemployment Survey (2011–12)", press note, third page. According to the Ministry, the annual unemployment rate stands at 3.8 per cent (ibid.). An International Labour Organization source indicates that the participation of women in the workforce fell from 37.3 per cent in 2004/05 to 29.0 per cent in 2009/10; only 44 per cent of the decline can be explained by the increased enrolment of

found in precarious jobs requiring low skills and offering low and unequal wages. According to official statistics, the general trend of daily earnings for women in recent decades has been comparatively lower than those of men in virtually all sectors, including manufacturing, mining and service sectors.[26]

39. Labour legislation in India provides for safeguards to ensure respect for the rights of women at work, and schemes are in place to help women improve their skills in specific occupations, thus moving beyond subsistence labour skills. For example, there are training institutes to help women gain access to the labour market, including industrial training institutes, with 14,059 centres across the country. Public/private schemes have been designed by companies and public institutions to provide training for women in key industrial areas, but there is no commitment to future employment in those companies.

40. Legal measures have been instituted to address sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment comprehensively and is largely in line with the 1997 Vishaka judgement.[27] It provides for complaints committees in all workplaces employing at least 10 persons. Moreover, while penalties are prescribed in the event of a false or malicious complaint, the Act seeks to prevent the revictimization of victims who are unable to provide adequate proof or substantiate a complaint.

41. In terms of safety and health at work, in 2009 the Government instituted the National Policy on Safety, Health, and Environment at the Workplace, including an action programme for implementation, which is to be reviewed every five years. The policy is guided by constitutional principles relating to work, which include maternal protection, health and strength at work, prohibition of child labour, and participation in decision-making.[28]

42. Microcredits are used widely in the country, particularly by poor and vulnerable women. Most loans are provided by microfinance institutions, including non-banking financial (or "Section 25") companies. Despite concerns about a lack of adequate regulation and abusive practices, the adoption of legislation at the Union level, such as the Micro Finance Institutions (Development and Regulation) Bill, 2011 is still pending. Some States have adopted legislative frameworks, but the overall view is that those institutions operate in a largely unregulated market.

43. In terms of the prohibition of slavery and slavery-like practices, such as bonded labour, the Bonded Labour System (Prohibition) Act, 1976 was enacted as a deterrent.

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women in secondary education (International Labour Organization *Global Employment Trends 2013*, p. 78, available from www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_202326.pdf).

[25] Occupational sectors where women are likely to be concentrated, which include basic agriculture, sales and elementary services and handicraft manufacturing, have not created new employment. See International Labour Organization, "India: Why is women's labour force participation dropping?", 13 February 2013. Available from www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_204762/lang--en/index.htm.

[26] India, Labour Bureau, Statistics: Occupational Wage Surveys. Available from www.labourbureau.gov.in/OWS%20New%20Table.htm.

[27] See Supreme Court of India, *Vishaka and others* v. *State of Rajasthan and others*, 1997. Available from www.iiap.res.in/files/VisakaVsRajasthan_1997.pdf.

[28] Constitution, Directive Principles of State Policy, Part IV.

C. Social and cultural rights

44. Pervasive gender stereotyping, whether in the media, in the community or in discourses by public officials, was highlighted as an impediment to women's development. The pervasive culture of denigrating and marginalizing women's perspectives, concerns and also their identity was an issue that was raised by several interlocutors. Concerns were also raised about the resulting impact on the social standing of women. According to official data, between 2011 and 2012 the number of cases involving insult to the modesty of women increased by 7 per cent.[29] In 1986, the Indecent Representation of Women (Prohibition) Act was enacted to prohibit indecent representation in advertisements, publications, writings and paintings or in any other manner. New amendments have been proposed to include new forms of communication, to strengthen penalties and to provide for preventive measures. No official information was shared as to accountability measures to address the continuing occurrence of such stereotyping by either State or non-State actors.

45. Effective implementation of legislation is dependent on the cultural and social norms that exist in a society. Women's role in participating and shaping such norms is essential, but is dependent on whether gender equality is the dominant culture and whether the status of women allows for their effective participation. As indicated above, women's participation in shaping the culture of equality is restricted by the dominant patriarchal culture that is deeply entrenched and pervasive.

46. Many interlocutors also pointed to the denial of the rights to social goods such as education, health and social benefits as a barrier to the fulfilment of the rights necessary for a life of dignity.

IV. Challenges in fulfilling the State's obligation to act with due diligence to eliminate violence against women

47. States are required to exercise due diligence to prevent and respond to all acts of violence against women. A comprehensive system of prevention and protection, with real prospects of mitigating harm, altering outcomes and ensuring accountability, must be the norm.

48. A framework of analysis to assess the obligation of India to prevent, protect, investigate, prosecute and punish, and provide for effective redress measures for acts of violence against women, in accordance with international and national law, is provided below.

A. Prevention

49. Violence against women became a priority political issue following the brutal gang rape, on 16 December 2012, and tragic death of a young student in New Delhi. The outrage and condemnation that followed in India, and beyond, was accompanied by widespread social mobilization of citizens demanding justice, accountability and more protection for women and girls. As a consequence, the Verma Committee was established by the Government to review existing normative gaps. The committee's January 2013 report included observations and recommendations on addressing sexual violence in the country, with respect to, inter alia, reforms to the police, judiciary, political institutions and

[29] India, *Crime in India* (footnote 1 above), p. 84.

education; improvement of security in public spaces; and protection in the family. The recommendations led to the adoption of new legislation, notably the new Criminal Law (Amendment) Act, which recognizes acid attacks as a new criminal offence; provides for penalties for sexual harassment, assault against or use of criminal force on a woman with the intent to disrobe, voyeurism and stalking; introduces the crime of trafficking; and criminalizes rape and gang rape. The Act improved the legislative framework significantly, introducing new criminal offences and stronger sanctions.

50. However, the laws that were adopted did not fully reflect the recommendations of the Verma Committee. The opportunity to adopt a holistic approach to violence against women, including addressing the root causes and consequences of such violence, was lost. In fact, the Criminal Law (Amendment) Act failed to: criminalize existing beliefs and practices linked to chastity; protect women with disabilities, unmarried women, lesbian, gay, bisexual and transgender persons, religious minorities, and girls below 18 years of age from sexual violence; or recognize marital rape as a criminal offence. Moreover, gang rapes and mass crimes involving brutal acts of sexual violence are not considered as multiple crimes against women, but as a single punishable crime under this law. Many concerns were raised about the deterrent effect of the application of the death penalty, as provided for in the Act. This is a statutory option for the courts in cases of gang rape where a perpetrator is a repeat offender, or if sexual violence results in the death of the victim, or puts the victim in a permanent vegetative state. It is of concern that conviction in such cases may entail higher evidential burdens for the victim, since the death penalty is a consideration in sentencing. The current legislative framework is therefore still in need of reform.

51. Serious concerns were expressed with regard to the insensitive and taunting attitude of some members of Parliament with regard to the Criminal Law (Amendment) Act. The Special Rapporteur regrets that some political leaders are not fully committed to the process of legal and social change as regards women's human rights.

52. The Protection of Women from Domestic Violence Act, 2005 seeks to protect, and prevent harm to, women who are or have been abused by a male spouse or a family member. The law broadly defines domestic violence and upholds the right of victims to live in the household, irrespective of title rights, and has a number of provisions for the issuing of protection orders. Other aspects include procedures for obtaining relief, such as financial assistance, and a detailing of the role and powers of service providers.

53. The National Mission for Empowerment of Women has a National Mission Authority at the apex level under the Chairmanship of the Prime Minister. It is mandated to ensure policy convergence among ministries and state governments and to strengthen the overall processes that promote the all-round development of women. The Mission facilitates the convergence of gender-sensitive schemes for women; carries out research, awareness-raising, education and capacity-building activities; and works to strengthen the institutional framework. However, challenges were noted in terms of collaboration with some states, notably those in which the ruling political party was different to that of the central Government. Moreover, some interlocutors noted that the budget allocation for women's issues was much lower than that for children's issues in the Ministry of Women and Child Development. The Mission confirmed the lack of gender programmes in that ministry, and also the need to designate gender convergence officers in every ministry to address the gaps.

54. As regards early marriages, good practices were reported in Rajasthan, whereby specialized local officers were assigned to conduct prevention activities. Despite some positive developments, there are significant gaps in the legislation, particularly in the Penal

Code, whereby child marriages are allowed through the practice of declaring them voidable, not void, despite the protection provided in the Prohibition of Child Marriage Act, 2006.[30]

55. The prevalence of dowry-related practices throughout the country was raised as a serious concern. The Dowry Prohibition Act prohibits the giving of, taking of and demand for dowry, and establishes dowry prohibition officers to ensure the implementation of the law. Data from the National Crime Records Bureau reflects an increasing trend of reported dowry-related deaths since 2008.[31] Concerns about the lack of effective implementation of the law were noted.

56. In order to better address "honour crimes", the Law Commission of India issued a report entitled "Prevention of interference with freedom of matrimonial alliance (in the name of honour and tradition): a suggested legal framework", in August 2012. While the report is only recommendatory in nature, the Special Rapporteur was informed that such recommendations are given due consideration by the Government.

57. National human rights institutions are crucial to promoting and monitoring the effective implementation of legislation and the State's obligations under both national and international law. India has the National Human Rights Commission and 23 state human rights commissions dealing with human rights. The National Human Rights Commission has a broad human rights mandate, which includes women's rights. The National Commission for Women has the specific mandate to review constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redress of grievances, including on violence against women, and advise the Government on all policy matters affecting women.

58. The Special Rapporteur received reports indicating that the legal basis of the National Commission for Women is not in accordance with international standards; that the institution lacks foundational, functional, operational, political and financial independence; and that the Commission is generally unable to adapt to the evolving and transformative demands of the human rights of women. According to section 3 of the National Commission for Women Act, 1990, the Commission's composition is determined by the central Government. A number of allegations highlighted the Commission's inability to deal with complaints effectively and undertake independent investigations into violations of women's rights. Reports also reflect the Commission's failure to address the causes and consequences of violence against women, including, for example, by finding that no particular religious group was targeted during the 2002 Gujarat massacre;[32] by consistently

[30] In 2012, the Delhi High Court held that: "Consent below the age of 16 years is immaterial, except when the rape is committed by a male who is married to the girl. Section 376 [Indian Penal Code] does not treat the rape committed by a husband on his wife above the age of 15 years as an offence". Moreover, the Court also held that the marriage was not void but voidable: "if the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted". According to section 3 of the Prohibition of Child Marriage Act, such marriages are "voidable at the option of the contracting party who was a child at the time of the marriage". See the Court's judgement of 27 July 2012 on the Hindu Marriage Act, 1955, paras. 47 and 51. Available from www.delhicourts.nic.in/July12/Court%20on%20its%20own%20Motion%20Vs.State.pdf.

[31] India, *Crime in India*, p. 81.

[32] See *Report of the Committee Constituted by the National Commission for Women to Assess the Status and Situation of Women and Girl Children in Gujarat in the Wake of the Communal Disturbance*, (2002). See also "NCW faces flak for riot report", *Times of India*, 26 April 2002. Available from http://articles.timesofindia.indiatimes.com/2002-04-26/ahmedabad/27114492_1_ncw-cases-of-sexual-assault-women-and-children.

justifying sexual assault on women as a result of "provocative dressing";[33] by its inability, over many years, to promote much needed law reform; and by denying reports of sexual violence by security forces, including in regions governed by the Armed Forces (Special Powers) Acts.

B. Protection

59. The lack of implementation of the Protection of Women from Domestic Violence Act was a concern often raised. Under the Act, women victims require the assistance of a protection officer to lodge a complaint and to file a domestic incident report. The recruitment and deployment of protection officers in the country is limited; they often work part-time and lack the resources to assist victims to file complaints. For instance, in the State of Rajasthan, with a population including approximately 27 million women,[34] there are only 607 designated protection officers and 118 organizations registered as service providers.[35] The inadequacy of resources to provide a mandatory service is a reflection of a failure to act with due diligence. The Special Rapporteur was informed that the central Government is considering providing financial assistance to states to fund full-time protection officers. In addition, concerns were raised with regard to the lack of protection for people in same-sex relationships, due to the language in the law as regards jurisdiction.

60. Although telephone hotlines are available, the police are usually the first point of contact for many women, according to reports received. Victims of violence, who require from the State special security, shelter, public housing, health care and socioeconomic protection, often face significant challenges. Many services are channelled through providers that lack sufficient resources. Numerous allegations were made of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services.

61. Another concern highlighted was that the criminal justice system does not operate fully on the basis of the rule of law in accordance with international standards. The Special Rapporteur was informed of cases in which courts have criminalized women victims of violence, including victims of sexual and communal violence. Also repeatedly raised was the concern that legal aid, a right guaranteed in article 39A of the Constitution, was not equally granted to women in practice, and in particular to poor and marginalized women.

C. Investigation, prosecution and punishment

62. Concerns were voiced with regard to the investigation of cases and the prosecution and punishment for crimes committed against women. The proportion of women in the police and in the judiciary is seriously low, which contributes to a lack of attention to women's issues.

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[33] See, for example, "Guwahati molestation: NCW chief Mamta Sharma advises women to dress 'carefully'", *India Today*, 18 July 2012. Available from http://indiatoday.intoday.in/story/guwahati-molestation-ncw-chief-mamta-sharma-advises-women-to-dress-carefully/1/208869.html. See also Sonal Makhija and Swagata Raha, "A review of the working of the Karnataka State Human Rights Commission and the Karnataka State Commission for Women", Daksh & Accountability Initiative, April 2011, sec. 5.2.2. Available from www.accountabilityindia.in/sites/default/files/daksh_kshrc_kscw_apr_2011.pdf.

[34] 2001 census.

[35] Interview with representatives of the government of Rajasthan.

63. Deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants, with regard to the handling of cases, further contribute to victims not reporting, withdrawing complaints and not testifying. Also, the attitudes and prejudices of many village leaders in Khap Panchayats, who act as informal judicial officers, often lead to a pre-arranged settlement between the families, thus failing to provide effective redress for victims. Few police stations have specialized women's mechanisms to address the concerns of women, including violence cases, and to provide the assistance and protection that is required during the investigation phase. Impunity for abuses committed by police officers and the need for civilian oversight was highlighted.

64. Concerns were also raised about evidence gathering, including the practice of degrading medical and forensic examinations, such as the "two-finger test" for victims of sexual violence. The test is often carried out without the victim's consent, and despite the practice being officially discontinued by the Director General of Health Services in 2011, and a Supreme Court decision of 2013 branding it as a violation of the victims' right to privacy.

65. The Special Rapporteur heard complaints about the failure by the justice system in some states to ensure that women victims and witnesses of acts of violence benefit from adequate safety measures and judicial safeguards. Numerous allegations were received of women being subjected to acts of coercion and duress in a deliberate attempt to prevent the investigation of cases and punishment of perpetrators. Other accounts highlight the denial of the right of women to a fair trial, owing to a failure to receive legal assistance to pursue their cases.

66. The overall conviction rate in India for crimes listed in the Penal Code was 38.5 per cent in 2012, the lowest in 10 years, largely owing to delays in the finalization of cases.[36] According to the National Crimes Records Bureau, the average conviction rate for crimes against women is 21.3 per cent for cases of kidnapping and abduction of women and girls, assault on women, insult to the modesty of women, cruelty by family members and trafficking of girls.[37] Moreover, the annual analysis provided by the Bureau indicates that in 2012, reports of crimes against women had increased by 6.8 per cent over 2011 and by 24.7 per cent over 2008.[38] The proportion of registered cases of crimes committed against women vis-à-vis crimes in total increased from 8.9 per cent in 2008 to 10.2 per cent in 2012.[39] The low conviction rate and the higher number of cases registered will not act as a deterrent for future crimes against women, nor will it engender trust in the judicial system.

67. Impunity for crimes relating to communal violence is the norm. The recommendations of the Committee on the Elimination of Discrimination against Women relating to the Gujarat massacre (CEDAW/C/IND/CO/SP.1) have not been fully addressed as yet. Moreover, the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill has been pending in Parliament for over eight years; despite the necessity for such a law.

68. In terms of the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, which provide a wide range of powers to the army, the Special Rapporteur was informed that their powers are broader than those

[36] India, *Crime in India*, p. 77. By the end of 2012, 84.6 per cent of criminal cases under the Penal Code remained pending for trial in various courts of the country (ibid., p. 73).

[37] Ibid., Figures at a Glance–2012.

[38] Ibid., p. 81. By number of crimes registered as cases of violence against women, the tendency also increased significantly, from 143,795 in 2001 to 244,270 in 2012 (ibid., Additional Tables, "Cases registered under crimes against women in India during 2001–2012").

[39] Ibid., p. 81.

permissible under states of emergency. Under the Acts, special powers are granted to the security forces in the "disturbed" regions of Jammu and Kashmir and the north-eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Due to the enforcement of those laws, numerous allegations of human rights abuses were shared. These include violations of the right to life; sexual violence; arbitrary detention; torture and ill-treatment; violations of freedom of movement, expression, peaceful assembly and association; and violations of due process and equal protection before the law. The Special Rapporteur was not informed of any measures to ensure accountability and redress for victims. On the contrary, reports have been received alleging a total disregard of the non-derogable nature of some rights, provided for in article 4 of the International Covenant on Civil and Political Rights, and also an overall failure to justify restrictions of fundamental freedoms in a manner that is in compliance with the Covenant, a requirement reiterated by the Human Rights Committee on numerous occasions.[40] Moreover, the Army Act, 1950 limits the scope for civil courts to consider allegations of violence against women perpetrated by army officials, including killings and sexual violence. According to that legislation, only victims not subjected to military, naval or air force law can access civil courts, which effectively excludes persons living in the territories under the Armed Forces (Special Powers) Acts.

D. Provision of effective redress, including reparations

69. As noted above, the Special Rapporteur was not provided with data on any measures to ensure redress for women victims of violence in the areas under the Armed Forces (Special Powers) Act and its variations. The norm of impunity that governs those territories is of great concern, as victims and their families are prevented from exercising their right to know the truth about violations, have no access to effective remedies and are not given guarantees of non-recurrence.

70. With regard to systemic failures, the low rate of prosecution and conviction for acts of violence against women contributes to the lack of effective redress provided to victims. Redress begins with the filing of domestic incident reports and a First Information Report. As noted above, this is deficient in many respects. Compensation payment is dependent on the filing of a case, which is dependent on the availability of protection officers and the provision of some form of legal identification. Women belonging to marginalized groups, including irregular migrants, domestic workers, scheduled castes and tribes and so-called backward castes are often unregistered citizens, or lack identification cards. Such factors contribute to a culture of normalization of violence against women.

71. Women experience obstacles in gaining access to mechanisms of redress, including legal aid, counselling services and shelters. They are also revictimized and exposed to further risk of violence through the denial of redress in the context of informal trials or negotiations between families and community leaders. The payment of financial compensation by the perpetrator or his family for acts of violence against women, in lieu of legal remedies, was a recurrent concern *vis-à-vis* the formal and informal justice systems.

[40] See Human Rights Committee general comments No. 27 (1999) on freedom of movement, para. 13; No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 6 and No. 34 (2011) on the freedoms of opinion and expression, para. 21.

E. Remedies for specific groups at risk

72. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 lists the entitlements for persons with disabilities and the obligations of the central and state Governments and local bodies. The Act contains no provisions to address the specific needs of women with disabilities who are victims of violence. Responses to violence against women with disabilities often fail to adapt to the type of impairment, whether psychological, physical, sensory or intellectual. Moreover, reports highlight a consistent lack of disaggregated data collection on disabilities, which renders the violence committed against women with disabilities invisible. In 2006, the Government issued a National Policy for Persons with Disabilities which, according to information received, needed to be harmonized with the Convention on the Rights of Persons with Disabilities.[41] Following the ratification by India of the Convention, a new bill amending the 1995 Act was proposed, with specific provisions to protect women from violence.[42]

73. In 2012, the Government expanded protection to refugee women, by allowing all refugees recognized by the United Nations High Commissioner for Refugees to apply for long-stay visas and work permits. This allowed refugees and asylum seekers access to health and education services on equal terms with Indian citizens. However, adequate measures are still required to ensure access to these services by women, including those who have been forcibly displaced within the country. Reports indicate that many victims do not have access to the necessary services provided by the women's protection clinics of the Office of the United Nations High Commissioner for Refugees, as those are either not present in the area where they live or lack sufficient resources. Specific programmes are needed to address the lack of livelihood opportunities for refugees and asylum seekers, as they are often excluded from gaining access to services and participating in decision-making.

74. The Special Rapporteur was informed that the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill envisages offering protection to religious and linguistic minorities and to scheduled castes and tribes, while providing standards for addressing communal violence. The Bill reaffirms the importance of non-discrimination when public officials discharge their responsibilities, in particular with regard to addressing violence against religious and linguistic minorities and scheduled castes and tribes. However, as noted by the Committee on the Elimination of Discrimination against Women, the Bill should include, inter alia, "a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules" (CEDAW/C/IND/CO/3, para. 25).

V. Conclusions and recommendations

75. **The Government of India has recognized the need to address violence against women as a human rights violation, and also as an issue that detracts from the country's path to prosperity and inclusive development. It has taken legislative measures in that regard, including measures to address rape and sexual violence. However, significant gaps remain in the legislative framework as regards the failure to**

[41] National Human Rights Commission, *Know Your Rights: Rights of Persons with Disabilities* (2010), p. 17.

[42] Draft Rights of Persons with Disabilities Bill, 2012. Available from http://socialjustice.nic.in/pdf/draftpwd12.pdf.

recognize all forms of violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women. Moreover, there is a lack of effective remedies to address the main manifestations of violence against women, owing either to the absence of specific programmes or to a lack of implementation. The inability to ensure accountability and redress for victims has led to an increase of violence against women and the continued discriminatory treatment of victims.

76. **The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Based on the idea of superiority of men over women, those manifestations exacerbate women's position of dependence and subordination and significantly obstruct effective implementation of relevant legislative and policy measures. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the community and in printed and electronic media, the elimination of violence against women remains a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women.**

77. **The Special Rapporteur would like to address the recommendations listed below to the Government.**

Law and policy reforms

78. **The Special Rapporteur recommends that the Government:**

(a) Ratify all outstanding international human rights instruments;

(b) Withdraw the declarations and reservation to the Convention on the Elimination of All Forms of Discrimination against Women, in particular regarding articles 5 (a); 16, paragraphs 1 and 2; and 29, paragraph 1;

(c) Amend the Criminal Law (Amendment) Act, 2013 and in particular review the provisions that provide for the death penalty in section 376A; include a definition of marital rape as a criminal offence; expand the scope of protection of the law and include other categories of women, including unmarried women, lesbian, transgender and intersex women, religious minorities and underage citizens; and define gang rape as multiple crimes requiring appropriate punishment (section 376D);

(d) Repeal section 377 of the Penal Code, which criminalizes consensual same-sex behaviour;

(e) Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers;

(f) Repeal, as a matter of urgency, the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the Armed Forces is free from legal barriers;[43]

(g) Adopt the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and ensure that the Bill incorporates the recommendations of the Committee on the Elimination of Discrimination against Women in that regard (CEDAW/C/IND/CO/3, para. 25);

[43] See also A/HRC/23/47/Add.1, para. 101.

(h) Adopt the Indecent Representation of Women (Prohibition) Bill, 2012, to ensure that gender stereotypes are also banned in electronic media;

(i) Ensure women's participation in elected parliamentary bodies, through the adoption of legislation, including the Women's Reservation Bill;

(j) Ensure a rights-based approach in the Rights of Persons with Disabilities Bill, 2012, in line with international standards;

(k) Strengthen the implementation of the Protection of Women from Domestic Violence Act, 2005, by:

(i) Allocating sufficient resources to ensure that an adequate proportion of protection officers are employed;

(ii) Ensuring that protection officers are properly equipped to conduct their activities, in terms of administrative and logistical resources, and that funds are made available for their full-time employment;

(iii) Ensuring that the systems and procedures established under the Act are adequately adapted to deal with violence against women with disabilities;

(l) Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible;

(m) Take effective measures to ensure that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is adequately implemented, in particular with regard to the establishment and functioning of the complaints system;

(n) Harmonize the framework of the National Commission for Women Act, 1990, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to ensure independence, transparency and accountability. In particular:

(i) Amend the Act to ensure a system for the nomination and selection of the Commission's members and chairperson that is transparent, democratic and non-partisan; apply an eligibility criteria for membership with clear requirements regarding expertise and professional experience on women's issues; prohibit members of Parliament or state legislatures or persons connected with political parties from being appointed; apply the same selection principles as regards staff; and allow the Commission more autonomy in appointing its own personnel;

(ii) Further ensure that the Commission is empowered to undertake independent investigation into alleged violations of women's rights;

(iii) Undertake a comprehensive qualitative review of the performance of the Commission, in particular with regard to its achievements in addressing violence against women and systemic, gender-related social, economic and legal issues pertaining to women, including accountability for crimes against women;

(o) Take appropriate measures to address the situation of irregular and domestic migrant women, including women refugees and asylum seekers; strengthen temporary special measures, including by ensuring that they are included in governmental and National Commission for Women programmes and projects, to enable them to better access services and improve their participation and representation in public life; strengthen and expand the services of the women protection clinics across the country;

(p) Make available increased resources to support income-generating activities for women, including marginalized women and women with disabilities. In that context, adopt the Micro Finance Institutions (Development and Regulation) Bill, 2011 to ensure that microfinance institutions operate within a single regulatory framework to eradicate poverty and extreme poverty in accordance with international standards, including through transparent pricing, the provision of adequate financial products and the prohibition of multiple lending, which results in over-indebtedness;

(q) Take measures to ensure that displaced populations and evicted families have adequate access to livelihoods, including access to health and education;

(r) Establish an independent national inquiry mechanism to review the current situation and challenges with regard to the fulfilment of women's human rights;

(s) Ensure that programmes and projects designed for women are periodically and qualitatively reviewed;

(t) Consider adopting a State policy to address the structural causes of all levels of poverty of women;

(u) Intensify efforts to ensure that training initiatives for women are designed to improve access to all occupational groups and industries.

Accountability

79. **The Special Rapporteur recommends that the Government:**

(a) Take effective measures to ensure access to justice and effective redress for all victims of violence against women. In particular, it should:

(i) Ensure that the full ban on Khap Panchayats by the Supreme Court is implemented throughout the country;

(ii) Ensure that cases of violence against women are addressed by the judiciary and not by informal justice mechanisms;

(iii) Monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies;

(iv) Ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished;

(v) Ensure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or harassment, and that protection is provided free of cost for the victim, if necessary;

(vi) Ensure legal, housing, security and financial assistance measures for victims of violence that enable them to pursue accountability for crimes and also to rebuild their lives.

Societal transformation, including awareness-raising, addressing gender stereotypes and women's empowerment

80. **The Special Rapporteur recommends that the Government:**

(a) Design and launch a comprehensive training and awareness-raising programme for police officers charged with the responsibility of filing complaints of violence against women, including First Information Reports and domestic incident reports;

(b) Design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including, inter alia, dowry-related practices, acid attacks, so-called honour crimes and witch-hunting;

(c) Carry out measures to train and sensitize media on issues relating to women's rights and violence against women in particular, so as to contribute to changing cultural and social beliefs based on patriarchal norms that perpetuate harmful stereotypes and myths about women;

(d) Develop and implement, in cooperation with international partners and civil society, capacity-building and training activities for service providers, including public officials, members of Parliament and the judiciary, health-care professionals and others, on issues relating to violence against women.

Statistics and data collection

81. **The Special Rapporteur recommends that the Government:**

(a) Strengthen the current system hosted by the National Crime Records Bureau of the Ministry of Home Affairs for the collection and analysis of data relating to crimes against women, by disaggregating data by sex, age, caste, disability, religion, language and other relevant characteristics;

(b) Establish intergovernmental linkages among the ministries responsible for gender-related work to ensure consistent and standardized collection of data by each respective ministry;

(c) Periodically conduct a thorough analysis of data, to understand the different trends and evolutions of manifestations of violence against women;

(d) In cooperation with civil society organizations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum

Mission to Bangladesh (20–29 May 2013)*

Summary

This report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, following her visit to Bangladesh from 20 to 29 May 2013. It examines the situation of violence against women in the country, taking into account its causes and consequences, and implications for the effective exercise and enjoyment of human rights by women. It also discusses the State's responses, through the lens of the principle of due diligence, to prevent such violence, protect and provide remedies to women who have been subjected to violence, and prosecute and punish the perpetrators.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

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Annex

[*English only*]

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Bangladesh (20–29 May 2013)

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, conducted an official visit to Bangladesh from 20 to 29 May 2013. The objective of this visit was to examine the situation of violence against women in the country, including violence that is perpetrated within the family, in the community, in institutional settings and in the transnational arena.

2. In Dhaka, the Special Rapporteur met with the Ministers of Information and Law, Justice and Parliamentary Affairs and held consultations with high-ranking officials of the Ministries of Chittagong Hill Tracts Affairs, Education, Health and Family Welfare, Home Affairs and Women and Children's Affairs. She also met with the Chairman of the National Human Rights Commission, the Speaker of Parliament, the Chairman of the Bangladesh Law Commission and members of the Parliamentary Standing Committee of the Ministry of Women and Children's Affairs. She visited the Dhaka Medical Hospital, which houses the One-Stop Crisis Centre and the only burn unit in the country, a Government-run shelter, the women's ward in the Dhaka Central Jail and a Special Tribunal on Violence against Women and Children.

3. During her visits to Chittagong, Rangamati, Khulna and Jessore, the Special Rapporteur met with local authorities, including the District Commissioner of Jessore and the Deputy Commissioner of the Chittagong Hill Tracts, as well as police authorities. She met with representatives of civil society, including women's organizations, and representatives of United Nations Agencies and heard testimonies from a number of women in Jessore at a shelter run by a non-governmental organization (NGO).

4. The Special Rapporteur wishes to express her appreciation to all her interlocutors, including State authorities, civil society and United Nations representatives. Most importantly, she wishes to acknowledge the individual women who shared their personal experiences of violence and survival with her. The Special Rapporteur looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of her recommendations.

II. Manifestations of violence against women

5. Inequality and power imbalances between men and women are among the root causes of violence against women in the country. This is underpinned by the persistence of patriarchal attitudes towards women, as well as stereotypical views regarding their roles and responsibilities. More than one third of men and women in Bangladesh reportedly believe that wifebeating is justified in specific circumstances.[1] In addition, the misinterpretation of religion is also often used to discriminate and/or justify acts of violence against women.[2]

6. Many women in Bangladesh face multiple and intersecting forms of discrimination, including women with disabilities, indigenous and minority women, and migrant workers. Regrettably, comprehensive disaggregated data on all forms of violence against women is

[1] National Institute of Population Research and Training, *Bangladesh Demographic and Health Survey 2007* (Dhaka, 2009).

[2] See Citizens' Initiatives on CEDAW-Bangladesh, *Combined Sixth and Seventh Alternative Report to the UN CEDAW Committee* (Dhaka, 2010), pp. 22 and 50.

still largely unavailable in Bangladesh,[3] despite widespread acknowledgement that violence against women is of serious concern across the country.

A. Violence against women in the family

7. Domestic violence in all its manifestations is the most pervasive form of violence against women, with an estimated 60 per cent of married women reported having ever experienced violence at the hands of a spouse and/or in-laws.[4] As part of the Demographic and Health Survey[5] that was conducted in 2007, women were asked if they had experienced one of the following forms of physical or sexual violence by their husbands: being pushed, shaken or have something thrown at them; being slapped, having their arms twisted or their hair pulled; being punched with a fist or an object; being kicked, dragged or beaten up; being choked or burned; being threatened with a gun or a knife; or being physically forced to have sexual intercourse. Overall, 24 per cent of respondents reported having experienced some of these forms of violence in the 12 months prior to the survey, with 19 per cent reporting violence of a physical nature and 10 per cent reporting sexual violence.[6]

8. Dowry-related violence and killings reportedly remain prevalent across Bangladesh. During the first eight months of 2013, civil society organizations reported 327 cases of dowry-related violence suffered by women and girls. Of this total, 208 included physical abuse, 110 were murder cases, and in 9 cases the victims committed suicide. These cases do not include instances in which women's children or other relatives were the victims of such dowry-related violence.[7] Dowry demands are usually settled at the time of marriage; however, some men and their families continue to make dowry demands throughout the marriage. Women who are unable to satisfy those demands suffer threats of abandonment, beatings, cigarette burns, deprivation of food and medicine, acid attacks and, in some cases, death. The Special Rapporteur was also informed that a majority of the cases on violence against women that are brought to court deal with dowry-related violence.

9. The Special Rapporteur also received information indicating a link between women's greater access to independent sources of finance, such as paid employment or microcredit, and violence against women. Despite the overall benefits of women's access to these financial resources, it has been argued that microcredit has also worked against women's solidarity and contributed heavily to the "inflation" of dowry. As money has become more easily available to brides' families, women are increasingly sent home by their husbands or in-laws to persuade parents to borrow money, either for investment or for consumption. While, in theory, microfinance institutions would not lend money for the purposes of dowry payment, it is reported that in practice most village families do depend on microcredit to meet dowry demands.[8]

10. Despite being outlawed through the adoption of the Child Marriage Restraint Act of 1929, early marriage remains a major problem. According to the United Nations Children's Fund (UNICEF), 66 per cent of Bangladeshi girls are married before the age of 18 and

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[3] CEDAW/C/BGD/CO/7.

[4] See International Centre for Diarrhoeal Disease Research, Bangladesh, *From Evidence to Policy: Addressing Gender-Based Violence against Women and Girls in Bangladesh* (Dhaka, 2013).

[5] *Ibid.*, p. 22.

[6] *Ibid.*, pp. 29 and 33.

[7] Statistics provided by Odhikar, available from http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/07/Statistics_Dowry_2001-2013.pdf.

[8] Santi Rozario, "The dark side of micro-credit", *Open Democracy 50:50*, 10 December 2007.

approximately one third of women aged 20 to 24 were married by the age of 15.[9] The Special Rapporteur was informed that in rural areas, some parents feel compelled to marry off their girl children as a "protective measure" against rape, and they resort to obtaining fake birth certificates to escape penalties for violating the law.

B. Violence against women in the community

11. The prevalence of acid attacks remains problematic in the country, and these attacks occur within both the family and the community spheres. Civil society organizations reported 31 cases of acid violence in Bangladesh between January and August 2013. Of this total, 22 attacks were against adult women and 4 against girls. Likewise, in 2012, women and girls were the main victims of acid violence, with 58 women and 20 girls being targeted out of a total of 105 cases.[10] Acid is generally thrown on the face or sexual organs of female victims when demands for sex or marriage proposals are refused. The ultimate aim is to damage the victim's appearance in order to destroy her marriage prospects.

12. Rape is currently the second most commonly acknowledged form of violence against women and girls in Bangladesh, yet victims seldom seek legal redress. The Special Rapporteur received reports referring to 661 cases of rape during the first eight months of 2013, 281 of which involved adult women victims and 367 cases concerning child victims, including girls. Of these, 188 involved gang rape, 49 resulted in the murder of the victim, and in 5 cases, the victims committed suicide following the rape.[11]

13. Rape was raised as a major source of concern among women with whom the Special Rapporteur spoke. In some cases, rape is also used as a weapon to weaken or harm rival communities or groups. The Special Rapporteur heard testimonies of ongoing violence and rape of indigenous women by Bengali settlers in the Chittagong Hill Tracts.

14. Different forms of sexual harassment prevail in the country. According to interviewees, girls are regularly abused or harassed in school or on their way to school. Sexual harassment is also commonplace in various working environments and is sometimes justified as being "part of the culture", by both State and non-State actors.

15. Many women seek redress through the traditional justice system, also known as the *salish* system. This may result in double victimization for them, as often they obtain little or no remedy for violations. In addition, they may be subjected to beating, whipping and stoning following *fatwa* rulings that are commonly used to subordinate women by punishing behaviour that is deemed inappropriate or immoral. Such punishments have reportedly led many women to commit suicide. According to one NGO, of 21 cases they documented in 2013 of violence against women instigated by *salish* or *fatwa*, three cases resulted in suicide. These *fatwa* rulings included punishments such as lashes, "social boycotting", and forced marriage/divorce.[12] The Special Rapporteur was informed that the High Court Division has repeatedly ordered a stop to illegal punishments such as whipping, lashing and public humiliations, holding that these types of punishments are cruel,

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[9] See UNICEF, *The State of the World's Children 2013: Children with Disabilities*, United Nations publication (Sales No. E.13.XX.1).

[10] Statistics provided by Odhikar, available from http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/07/Statistics_Acid_2003-2013.pdf

[11] Statistics provided by Odhikar, available from http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2013/07/Statistics_Rape_2001-2013.pdf

[12] http://www.askbd.org/ask/2014/01/11/violence-instigated-fatwa-salish-january-31-december-2013/

inhumane and degrading.[13] The Court also held that *fatwas* are not binding and cannot be enforced. However, these punishments still persist and many women have been driven to commit suicide after being subjected to *fatwa* punishments.[14]

16. The Special Rapporteur also received information indicating high levels of violence against women from religious and ethnic minority communities, with Dalits, Hindus and indigenous groups most at risk.[15] Persecution of minorities includes rape and sexual assault of women in these communities.[16] The rate of rape is higher for minority women in Bangladesh because they are considered "double infidels" for being women and also for being part of a religious minority.[17] They are also commonly victims of *salish*/*fatwa*-related violence.

17. Community violence is also reportedly perpetrated against representatives of women's rights organizations and other human rights organizations working on women's rights. Women human rights defenders are targeted not only because they defend the rights of women, but also because they are women themselves. While reclaiming their rights or the rights of their communities, women human rights defenders are commonly perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity and the role and status of women in society.[18] In Bangladesh, human rights defenders commonly face harassment and/or slander by the community or by State officials because of their activism. The abuse ranges from verbal assaults to slander campaigns in the press, administrative harassment and even sexual harassment. The Special Rapporteur was informed that most of these violations remain unpunished.[19]

C. Violence perpetrated and/or condoned by the State

18. The main manifestations of violence perpetrated and/or condoned by the State include custodial violence and violence in militarized zones.

19. During the visit to the women's ward in the Dhaka Central Jail, the Special Rapporteur noted shortcomings in the conditions of detention, especially with regard to detainees' access to health care and hygiene. She was informed that incarcerated women did not have adequate legal representation or contact with their families. The lack of privacy resulting from the overcrowded facilities, and also the overt scrutiny by the authorities, make it difficult to hold confidential meetings, including during the visit of the Special Rapporteur. Nevertheless, she heard various testimonies from women, including those on death row. In the latter category, the interviews reflect incarceration for crimes that do not amount to "the most serious crimes" under applicable international standards. They also revealed deficiencies in the safeguards guaranteeing protection of the rights of those facing the death penalty.

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[13] http://www.hrw.org/news/2011/07/06/bangladesh-protect-women-against-fatwa-violence; http://www.blast.org.bd/content/judgement/ejp-judgment-8July2010.pdf.

[14] Human Rights Watch, "Bangladesh: protect women against 'fatwa' violence", 7 July 2011. Available from http://www.hrw.org/news/2011/07/06/bangladesh-protect-women-against-fatwa-violence.

[15] Mortuza Ahmmed, "Violence against the minorities in Bangladesh", *Romanian Review of Social Sciences*, No. 4 (2013).

[16] Md. Rajib Hasnat Shakil, "Systematic persecution of religious minorities: Bangladesh perspective", *IOSR Journal of Humanities and Social Science*, vol. 7, No. 3 (January–February 2013), available from http://www.iosrjournals.org/iosr-jhss/papers/Vol7-issue3/B0730917.pdf.

[17] *Ibid.*, p.12.

[18] A/HRC/20/16, para. 53.

[19] Observatory for the Protection of Human Rights Defenders, *Bangladesh: Human Rights Defenders Trapped in a Polarised Political Environment* (2013).

20. The Chittagong Hill Tracts remain a highly militarized region despite the existing peace accord of 1997 between the Government and the indigenous peoples' political party, Parbatya Chattagram Jana Samhati Samiti.[20] Among other things, the peace accord provides for a phased withdrawal of all temporary camps and the transfer of power to civilian authorities in the Chittagong Hill Tracts region. Interlocutors alleged that since 2007, most incidents of sexual violence have reportedly been perpetrated by Bengali settlers, who are seldom prosecuted for such crimes. The Special Rapporteur sought to examine the prevalence of other manifestations of violence against women, particularly intracommunity, but she did not receive any information on this issue during her visit.

D. Violence against women in the transnational sphere

21. The Special Rapporteur received reports of human rights violations, including violence against women, occurring in the Kutupalong refugee camp, which houses the Rohingya community near Cox's Bazar. Regrettably, the Special Rapporteur was denied access to the camp by Government authorities, thus preventing her from assessing the situation directly, including through interactions with women residents of the camp.

22. According to sources, violence against women remains prevalent in the official refugee camps, with more than 70 per cent of reported cases relating to domestic violence. Other reported cases include rape, attempted rape, child marriage, forced prostitution and trafficking. Further, refugee women living in the camps are not allowed to leave home without their husbands' permission and have fewer opportunities than men to participate in social activities; many girls who reach puberty are removed from school for marriage purposes. The Special Rapporteur is further concerned at the high number of people living under adverse conditions in makeshift camps, and notes the lack of data as regards these camps.[21]

23. Trafficking in persons continues to be a major problem, with Bangladesh being mainly a source country for men, women and children subjected to forced labour and sexual exploitation. Given the reluctance of victims' families to report cases of trafficking, it is difficult to access comprehensive data and statistics on the magnitude of the phenomenon. Estimates from various sources state that over 200,000 women and children have been trafficked during the past decade, with trafficking occurring both internally and across the border with neighbouring countries, under the guise of a better life and job opportunities.[22]

24. A conservative estimate reflects that there are approximately 7.7 million Bangladeshi migrants worldwide.[23] In 2011, it was estimated that 5.4 per cent of the migrant population was female.[24] Many women migrate to the Middle East through regular and irregular channels in search of better employment opportunities, but most of them are employed as domestic workers. They suffer various forms of abuse both during the process of migration and upon arrival, including domestic servitude, sexual harassment, physical mistreatment, withholding of payments and threats of denunciation of their irregular status.

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[20] According to the International Work Group for Indigenous Affairs (*Militarization in the Chittagong Hill Tracts, Bangladesh: the Slow Demise of the Region's Indigenous Peoples* (Copenhagen, 2012)), there are reportedly around 50,000 to 60,000 armed personnel still stationed in the region.

[21] Information provided by the Office of the United Nations High Commissioner for Refugees.

[22] United Nations Office on Drugs and Crime, Interview with Professor Zafir Hossain, Dean, Faculty of Law, University of Chittagong.

[23] International Organization for Migration–Dhaka, "About migration: facts and figures". Available from http://www.iom.org.bd/page/facts-and-figures/.

[24] *Ibid.*

The Special Rapporteur heard testimonies from female migrant workers who had been subjected to ill-treatment and corporal punishment in the destination country. Some young women were reported to have been sent back home after becoming pregnant as a result of sexual violence. Others returned to Bangladesh without receiving their full salaries or access to remedies for violations experienced.

III. Implications of inequality, discrimination and violence for the realization of human rights

25. Throughout Bangladesh, women and girls are prevented from fully enjoying their human rights both in law and in practice due to inequality and discrimination. Often, they are denied access to effective participation in all spheres of life. They are also denied education and employment opportunities and quality health services, and are subjected to all kinds of violence and abuse.

26. The adoption and/or review of legislation to ensure conformity with international human rights principles and standards is a welcome step. Unfortunately, law reforms will yield little positive results if the root causes of the diverse manifestations of violence against women and persisting stereotypes are not addressed, including through legal, political and social transformation efforts.

A. Civil and political rights

27. In Bangladesh, women's access to justice and participation in political and public life are particularly affected by violence against women.

28. Some measures have been put in place towards the empowerment of women and to increase women's political participation. For example, at the executive and legislative levels, the positions of Prime Minister, Speaker of Parliament, Leader of the Opposition and Foreign Minister are held by women. A number of mid-level positions in Government are occupied by women. Furthermore, the Fifteenth Amendment Act of 2011 increased the number of seats reserved for women in Parliament from 45 to 50. However, out of a total of 350 seats available in Parliament, women only hold 70 seats, a mere 20 per cent. The Special Rapporteur was informed that women are not sufficiently represented at the district and subdistrict levels. Also, once in office, female representatives often face discrimination from their male counterparts.

29. Personal status and family law, which are core to women's citizenship rights including their effective participation in public life, continue to discriminate against women and girls with respect to marriage, divorce, separation, guardianship, maintenance, adoption and succession. These personal status laws include both codified and uncodified rules, many of which were inherited from the colonial era.[25] There are also a number of discriminatory civil laws that are applicable to all religious communities in the context of marriage or divorce, such as the Special Marriage Act of 1872, the Child Marriage

[25] The key codified laws governing marriage and divorce in Bangladesh include, for Muslims: the Muslim Family Laws Ordinance (1961), the Dissolution of Muslim Marriages Act (1939) and the Muslim Marriages and Divorces (Registration) Act (1974); for Hindus and Buddhists: the Hindu Married Women's Right to Separate Residence and Maintenance Act (1946); and for Christians: the Christian Marriage Act (1872) and the Divorce Act (1869).

Restraint Act of 1929, the Family Courts Ordinance of 1985 and the Guardian and Wards Acts of 1890.[26]

30. Generally speaking, personal status laws in Bangladesh are discriminatory against women. Polygamy is allowed within both Muslim and Hindu/Buddhist personal laws. Personal laws governing both Christians and Muslims set out unequal divorce criteria for men and women, and laws governing Hindus/Buddhists do not allow divorce to take place. For women subject to any of these laws, maintenance during marriage is subject to the subjective conditions of "chastity" and wives being "dutiful". Only Christian personal laws refer to maintenance after divorce, yet this is reportedly rarely provided in practice. Furthermore, none of the personal laws recognize marital property, regardless of the women's contribution. For Hindu and Buddhist women, there is no mandatory marriage registration, leaving women in a very vulnerable position with regard to proving legitimacy of children, establishing rights to maintenance and/or pension, or for immigration purposes.[27]

31. As a result of these discriminatory laws, many women stay in violent marriages out of fear that their *de jure* and *de facto* legal status will be negatively impacted, and also that they will be denied financial support if they are divorced or separated.[28]

32. The right of access to justice and justice itself is problematic on many levels. The judicial system is faced with many challenges that have a negative impact on ensuring equal access to justice. Limited resources, poor infrastructure and the limited number of trained judges and lawyers, among others, have had a negative effect on women's capacity to seek redress through the judicial system. Despite constitutional guarantees with regard to due process, the Special Rapporteur was informed that law enforcement agencies often fail to uphold the relevant legal standards when dealing with cases of violence against women. The existence of parallel legal systems such as the *salish* further compounds the denial of effective justice.

33. While the Constitution stipulates that Islam is the State religion, it also provides that "subject to law, public order, and morality, every citizen has the right to profess, practice, or propagate any religion".[29] Nonetheless, conservative interpretations of religion impact on the promotion and protection of women's human rights, particularly on equality and non-discrimination rights. The 13-point demand of the Hefajat-e-Islam, a fundamentalist Islamic group, calling for gender segregation is of particular concern. *Fatwa* rulings also remain widespread throughout the country, despite the fact that in 2010, the Supreme Court declared that the "imposition and execution of extra-judicial penalties including those in the name of execution of Fatwa, is bereft of any legal pedigree and has no sanction in laws of the land".[30]

34. Activists who work to defend human rights, including the human right of women to be free from discrimination and violence, face particular obstacles, including being abducted by members of the Bangladesh Army in the Chittagong Hill Tracts.[31] Other

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[26] See Human Rights Watch, "Will I get my dues…before I die? Harm to women from Bangladesh's discriminatory laws on marriage, separation, and divorce" (2012).

[27] *Ibid.*

[28] *Ibid.*

[29] See the Constitution of Bangladesh, Articles 2A and 41.

[30] Judgement of the Supreme Court of Bangladesh on 8 July 2010 on Writ Petitions No. 5863 of 2009, No. 754 of 2010 and No. 4275 of 2010, available from http://www.humanrights.asia/countries/bangladesh/countries/bangladesh/cases/Judgment%20on%20Fotwa%20and%20illegal%20punishment-ejp-judgment-8July2010.pdf.

[31] See annex.

allegations of harassment, arbitrary arrests and detention of activists have been the subject of a number of communications sent to the Government over the past two years by different Special Procedures mandate holders.[32]

B. Economic rights and the right to development

35. Bangladesh ranks as one of the world's most disaster-prone countries, with 97.1 per cent of its total area and 97.7 per cent of its population at risk of multiple hazards.[33] Despite the challenges, the Government remains committed to alleviating poverty and aims to become a "middle-income" country by 2021. The number of people living in poverty in Bangladesh has already been reduced by 8 million in five years. [34]

36. The Government of Bangladesh has taken positive steps towards the empowerment of women, including through the 2011 National Women's Development Policy that seeks to reduce violence; eliminate discrimination; increase access to education, health and employment; and address the special needs of older women, women with disabilities and women from indigenous and marginalized communities. The Ministry of Women and Children is responsible for preparing a work plan for the National Women's Development policy and for developing laws and policies to ensure economic empowerment and participation of women. It has allocated funding in its projected 2013–2014 budget for the policy.[35] However, the estimated expenditure from 2013 to 2014 on a national action plan for the implementation of the policy is zero, and no portion of the Ministry's budget was spent on the policy in its 2011–2012 and 2012–2013 periods. Moreover, the Ministry's most recent budget report projects zero expenditure on the policy in the coming years.[36]

37. The Government is currently implementing Vision 2021, which aims to make Bangladesh a middle-income country by 2021. The outline of the Vision 2021 plan states that the Government aims to achieve gender equality by addressing the poverty issues faced specifically by women.[37] Under Vision 2021, the Government will address women's issues in health, law and order, food security and economic opportunities, among other development areas. It also promotes gender balance in Government by introducing a separate quota system for women in Parliament and reserving 100 seats for women in direct government elections.[38] Moreover, it seeks to incentivize women to pursue vocational, primary, secondary and tertiary education and attain the necessary training to compete

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[32] See, for example, communication No. UA G/SO 218/2 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) BGD 10/2013 dated 6 September 2013.

[33] United Nations International Strategy for Disaster Reduction, *2009 Global Assessment Report on Disaster Risk Reduction: Risk and Poverty in a Changing Climate: Invest in Today for a Safer Tomorrow* (United Nations, Geneva, 2009).

[34] Md. Shahidul Haque, Foreign Secretary of Bangladesh, statement to the Asia–Pacific Ministerial Dialogue: From the Millennium Development Goals to the United Nations Development Agenda beyond 2015, 27 August 2013.

[35] http://mof.gov.bd/en/budget/11_12/mtbf/en/30_Women.pdf.

[36] http://mof.gov.bd/en/budget/13_14/mtbf/en/MBF_30_Women%20&%20Children_English.pdf.

[37] Bangladesh, General Economics Division, Planning Commission, *Outline Perspective Plan of Bangladesh 2010–2021: Making Vision 2021 a Reality* (Dhaka, 2010), available from http://planipolis.iiep.unesco.org/upload/Bangladesh/Bangladesh_Final_Draft_OPP_June_2010.pdf, p.8.

[38] *Ibid.*

equally in the job market.[39] In implementing Vision 2021, the Government also plans to amend laws that discriminate against women.[40]

38. The Special Rapporteur noted that existing schemes aimed at empowering women economically in Bangladesh seem to be tailored to specific sectors traditionally believed to be "suitable" for women, thereby perpetuating gender-biased stereotypes in employment. Women constitute a high proportion of unpaid family workers. For example, they work on family farms, in family businesses or in the household without pay.[41] They often use the microloans to start garment, agricultural or grocery businesses, areas that are typically associated with women.

39. The Special Rapporteur was informed that women resorting to microcredit loans often face problems with regard to timely repayment, thus increasing their vulnerability to violence: sources indicated that people in charge of granting loans and collecting weekly payments often resort to violence when collecting the loans. It was argued that repayment creates an environment of fear and intimidation, and recipients regularly sacrifice basic needs to meet a sometimes inflexible repayment schedule.[42]

40. Women make up approximately 36 per cent of the formal labour force in Bangladesh.[43] The 2006 Labour Act contains several provisions aimed at protecting the rights of workers. However, certain categories of workers, including domestic and agricultural workers, are not protected under this law. A very high percentage of the informal sector labour force is comprised of women who work mainly as domestic workers, in the shrimp cultivation sector and in the garment factories. The latter is a multimillion dollar business employing around 3 million people, 80 per cent of whom are women. Many stakeholders highlighted the poor working conditions under which women work, which are exacerbated by the lack of adequate safeguards in labour laws and regulations and which increase their vulnerability to abuse and exploitation.

41. Sexual harassment at work affects women's efforts to secure livelihoods. On 14 May 2009, the Supreme Court of Bangladesh issued specific guidelines against sexual harassment, which have provided a legal basis to address this form of violence until a law on the prevention of sexual harassment is adopted.[44] The Special Rapporteur was informed that a draft law was prepared in 2010 by Bangladesh National Women Lawyers Association in consultation with the Law Commission, and has been submitted to the relevant authorities. The Special Rapporteur is concerned that the law has been at the drafting stage for the past three years. On 26 January 2011, the Supreme Court also declared the stalking of girls and women illegal, and directed the Government to use the term "sexual harassment" instead of the widely used term of "eve teasing". The Court's ruling came amid growing instances of stalking that have led to the suicide of many victims.

42. The migration of women to foreign countries for domestic and other labour also gives rise to exploitation both inside and outside of Bangladesh. It is estimated that between January and June 2012 alone, 375,000 workers migrated abroad, including approximately

[39] *Ibid.*, p. 7.

[40] *Ibid.*

[41] See "Will I get my dues…before I die?" (footnote 26 above), p. 23.

[42] Jason Cons and Kasia Paprocki, "The limits of microcredit – a Bangladesh case", *FoodFirst Background*, vol. 14, No. 4 (Winter 2008).

[43] See International Labour Organization, *Bangladesh Decent Work Country Programme 2012–2015* (November 2012).

[44] Guidelines on prevention of sexual harassment laid down by the Supreme Court of Bangladesh on 14 May 2009 in *Bangladesh National Women Lawyers Association* v. *Government of Bangladesh and Others* (Writ Petition No. 5916 of 2008).

16,000 female workers.[45] Remittances by migrant workers reportedly contribute to around 13 per cent of the country's gross domestic product, moving the Government to place overseas employment as one of its priorities to foster economic development. Female migrant workers face more problems than their male counterparts when migrating abroad. They are frequently abused throughout the process of migration, and continue to struggle upon return due to the various challenges of reintegration. They are often unable to receive appropriate legal representation and access to justice while abroad, because of language barriers among other reasons, and do not receive compensation if their rights are violated.

43. The gendered aspects of issue of forced evictions and displacement due to economic development projects such as dams, eco- and national parks, and military bases, were raised as an issue of concern.

C. Social and cultural rights

44. Women's enjoyment of human rights is generally impacted by the social and cultural constructions of gender. In Bangladesh, women's roles and status are marked by duties as homemakers, and more specifically as mothers. These stereotypes place women at a disadvantage and prevent women from fully enjoying their rights to, among others, health and education. They also prevent women from contributing to the overall transformation and development of their society.

45. The right to health has been recognized in the Constitution as one of most basic necessities of citizens. In the last five decades, there has been an increase in the life expectancy of Bangladeshi women from 46.7 years in 1960 to 69 years in 2011.[46] Bangladesh Maternal Health Services have also reported a decline in maternal mortality rates from 322 in 2001 to 194 in 2010 (a 5.5 per cent rate of decline per year).[47] Furthermore, the proportion of women delivering in a health facility increased from 9 per cent in 2001, to more than 23 per cent in 2010.[48] However, the Special Rapporteur remains concerned that maternal deaths continue to be responsible for 14 per cent of all deaths among Bangladeshi women of reproductive age, mostly due to post-partum haemorrhages and eclampsia, and to the lack of access to comprehensive medical care.[49]

46. The Special Rapporteur notes that Bangladesh has achieved gender parity in primary and secondary education at the national level. This was achieved through specific interventions focusing on girl students, such as stipends and exemption of tuition fees for girls in rural areas, and the stipend scheme for girls at the secondary level. In addition, the Government has incorporated issues related to violence against women in its revised curricula and textbooks. Nonetheless, one fifth of children of primary school age (6–10) reportedly never attend school as a result of poverty, making them vulnerable to neglect, violence and exploitation. The Special Rapporteur notes that the prevailing level of violence against girls, including harassment by both teachers and fellow pupils in schools or on the way to and from school, early marriages and the absence of suitable toilets for girls, continue to result in high dropout rates among girls, especially in rural areas.

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[45] *Ibid.*

[46] http://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html.

[47] Angélica Arbulú and Mansud Ali, *Final Evaluation of Joint Programme to Address Violence against Women in Bangladesh* (2013).

[48] *Ibid.*

[49] National Institute of Population Research and Training, MEASURE Evaluation, UNC-CH USA, and icddr,b, *Bangladesh: Maternal Mortality and Health Care Survey 2010* (Dhaka, 2012).

47. Bangladesh has one of the highest child marriage rates worldwide.[50] Early marriages have serious consequences for the health, education and development rights of girls. The country also has one of the lowest birth registration rates, which hinders the effective implementation of laws against child marriages.

48. In addition to their low social and cultural status, the persistence of patriarchal and harmful practices, such as the payment of dowry, also negatively impact women's enjoyment of their social rights and increase their risk of experiencing violence. Dowry payment is one of the main sources of economic concern for families, which may force daughters to marry young, or to marry elderly/married men to reduce dowry payments. The social pressure of marrying women to equally or higher educated grooms, who require a higher dowry payment, is sometimes also a deterrent for families to continue with their daughters' education.[51] A 2010 study found that the absence of dowry demand in marriages lowered the likelihood of physical abuse of wives in rural settings, as well as its frequency and severity in both rural and urban settings, compared with marriages where dowry was demanded and fully paid. The report also found that the non-payment of dowry increased the likelihood of abuse and its frequency and severity in households in which it had been demanded.[52]

IV. Challenges in fulfilling the State's obligation to act with due diligence to eliminate violence against women

49. The Government of Bangladesh has committed to protecting and promoting the rights of women through its ratification of numerous international human rights instruments and has entered reservations to articles 2 and 16.1 (c) of the Convention on the Elimination of All Forms of Discrimination against Women, which respectively address the core obligation of States to eliminate discrimination under law (article 2) and eliminate discrimination in marriage and family relations (article 16). During the visit, the Special Rapporteur was informed that the withdrawal of those reservations was under consideration. Bangladesh also declared that "it would not undertake the obligations arising out of Articles 8 and 9 of the Optional Protocol" to the Convention, i.e. the recognition of the Committee's jurisdiction to investigate "grave or systemic violations" of the Convention.

50. Over the past two decades numerous laws, policies and programmes have been put in place to address the needs of women generally, and violence against women specifically. These include: the Human Trafficking Deterrence and Suppression Act 2012; the Hindu Marriage Registration Act 2012; the National Women's Development Policy 2011; the Domestic Violence (Prevention and Protection) Act 2010; the Citizenship Amendment Act 2009; the Bangladesh Labour Act 2006; the Acid Crime Prevention and Acid Crime Control Acts 2002; and the Prevention of Women and Children Repression Act 2000. Despite these developments, women continue to face discrimination on the basis of sex and on other grounds and are unable to effectively enjoy their human rights.

51. The National Human Rights Commission was established in 2008 under the National Human Rights Commission Ordinance. In the absence of an independent national commission on women's rights, the Commission has a women's cell mandated to monitor

[50] *The State of the World's Children 2013* (see footnote 9 above).

[51] S.M. Shahidul, "Marriage market and an effect on girls' school dropout in Bangladesh", *Journal of Alternative Perspectives in the Social Sciences*, Vol. 4, No. 2 (2012).

[52] Ruchira Tabassum Naved, "Dowry and spousal physical violence against women in Bangladesh", *Journal of Family Issues*, vol. 31, No. 6 (June 2010).

the rights of women in Bangladesh. It has launched campaigns to raise awareness on the issue of violence against women, and reports such campaigns as being some of their more successful ones.[53] It has also published an extensive report analyzing the impact of the Higher Judiciary's decisions on the protection of women's rights and how the Court's decisions measure against international human rights norms.[54] In spite of its limited human, technical and financial resources, the Commission has been a key institution in shaping the country's human rights discourse and providing a wide range of training to various institutions, state agencies, the media and the population at large.

52. Protective and preventative measures require the development of national data collection systems. Unfortunately, this does not exist in Bangladesh. At the central level, the Ministry of Home Affairs and the Ministry of Women and Children's Affairs compile statistics of cases received through their decentralized units. There is also a database on cases of violence against women under the Multi-Sectoral Programme on Violence against Women. However, those statistics do not accurately reflect the scale of the problem *de facto*.

A. Prevention

53. Despite the adoption of relevant legislation, there is a general lack of awareness of such laws, poor implementation by state agents and a reluctance of women to use the justice system as a means to seek redress.

54. The Dowry Prohibition Act adopted in 1980 prohibits dowry in all its forms and makes it punishable by fine, imprisonment of up to one year or both. However, in most cases, the perpetrators are not brought to justice for various reasons, including threats to the victim or her family, bribing of police officers and lack of forensic evidence. In many cases, victims are also persuaded to reach a compromise with the perpetrator.

55. As regards acid attacks, the Acid Crime Control Act of 2002 stipulates that the punishment for killing a person with acid or injuring a person resulting in the loss of vision, hearing, or damage or disfigurement of the face, breasts or sexual organs can result in capital punishment or life imprisonment and a fine not exceeding one *lakh taka* (approximately USD 1190). Furthermore, damage for disfigurement to any part of the body will result in a 14-year prison sentence or at least 7 years of "rigorous imprisonment".

56. As regards provisions in the Penal Code, the Special Rapporteur was concerned that marital rape is only recognized as an offence under the Penal Code if the child bride is younger than 13 years old.[55]

57. The Suppression of Violence against Women and Children Act came into force in February 2000. It is intended to address the need for more effective prosecution of perpetrators of violence against women and children than existed previously, and provides redress for victims of various manifestations of violence, including trafficking and acid throwing. The Act makes provision for compensation for the victim, as well as remedial measures for negligence or wilful faults committed by an investigating officer. Other features of the Act include provisions for the speedy investigation and trial of cases by the

[53] National Human Rights Commission, *Annual Report, 2012* (Dhaka), p. 13. Available from http://www.nhrc.org.bd/PDF/Annual%20Report%20English%202012.pdf .

[54] National Human Rights Commission, *Analysis of Decisions of the Higher Judiciary on Protection of Women's Rights in Bangladesh* (Dhaka, 2013), available from http://www.nhrc.org.bd/PDF/Study%20reports/Protechtion%20fo%20Women.pdf.

[55] See section 375 of the 1860 Penal Code.

tribunals, crimes under this law being mostly non-bailable, and the creation of specific tribunals for every district town to address related cases.

58. The Domestic Violence (Prevention and Protection) Act was enacted in 2010, and reiterates that domestic violence is a matter requiring the intervention of the State. The Act includes a broad definition of domestic violence that includes physical, psychological, economic and sexual abuse, and refers to persons who are, or have been, in a family relationship. The Act includes provisions for shelter homes, as well as medical and legal aid services for victims. It also grants Judicial Magistrates the power to award interim orders, such as protection orders, residential orders, maintenance orders and safe custody orders. The Act also includes provisions regarding the compensation of damages, a 60-day time period to have cases heard by a court and specific penalties for perpetrators, including prison terms and fines.

59. The Special Rapporteur was informed of the remaining challenges in the implementation of the law, mainly the lack of awareness of its existence by both authorities and victims. Advocates claim that the number of cases filed under the new law actually diminished after the first year of its enactment, and that domestic violence cases are still being largely processed under other legislation such as the Penal Code or the Dowry Prohibition Act, thus failing to benefit from some of the provisions in the new law. Advocates also reiterated the urgency of enacting the rules to carry into effect the provisions of the Act. These rules would include practical provisions regarding, *inter alia*, the duties of police officers and courts in domestic violence cases, the coordination between different intervening authorities, and adequate case management and data collection.

60. A Central Cell on the prevention of violence against women has been set up in the Ministry of Women and Children's Affairs to coordinate violence-related cases with other agencies.[56] This Cell receives complaints from the victims, mediates conflict through counseling and settles monetary disputes in relation to dowry. Temporary shelters have also been arranged to provide support to women who have been victims of violence.

61. In terms of awareness-raising campaigns and training, the Ministry of Information's Press Institute organizes training workshops for journalists on child labour, corporal punishment, and children and women's development issues through its Advocacy and Communication for Women and Children project financed by UNICEF since 1996. The National Human Rights Commission has also published various awareness-raising materials, including a human rights training manual for the police.

B. Protection

62. Measures by which States can fulfill their due diligence obligation to protect women from violence include the provision of services such as telephone hotlines, health care, counselling centres, legal assistance, access to shelters, restraining orders and financial aid to victims.[57] The Government of Bangladesh has put in place several protection measures over the past few years, including the One-Stop Crisis Centres, a National Trauma Counseling Centre and a Helpline.

63. One of the key features of the Domestic Violence (Prevention and Protection) Act 2010 is the issuance of protection orders. A protection order restrains the respondent from committing any act of domestic violence, entering the victim's place of employment or school and having any personal, written or any form of communication with the victim. In

[56] See CEDAW/C/BGD/5.

[57] E/CN.4/2006/61, para. 47.

addition to protection orders, courts can also issue residence and maintenance orders.[58] Although the Act came into force in 2010, victims are often unable to benefit from it due to a lack of awareness of its existence; structural, institutional and procedural obstacles that the victims may face within the justice system; and the limited forms of services available. Under this Act, victims have the right to legal assistance, counselling and shelter, and are allowed to file compensation claims. The perpetrators of domestic violence can face up to six months' imprisonment and up to two years in case of multiple offences. Despite these provisions, victims of violence are reluctant to seek support through the justice system due to several factors, including community pressure and stigma, the lack of responsiveness by the justice system, pressure to withdraw complaints by local police and also the length of proceedings. The Act remains underutilized and limits the protective value of the law.

64. Active steps have been taken to redefine the police force as a service. Gender guidelines have been drafted for model police stations through the police reform programme. The Special Rapporteur was informed that the police apply a "zero tolerance" policy when dealing with cases of violence against women. The Government has also taken measures to promote gender-sensitive policing and improve victim support services through its Police Reform Programme. In 2009, the first Victim Support Centre was established at Tejgaon Thana Model Police Station. The rehabilitation services are implemented by 10 NGOs who have signed Memoranda of Agreement with the police. The establishment of such a centre within a policing environment has encouraged victims to report crimes to the police in a safe and secure environment, while accessing professional services.[59] The Special Rapporteur was informed by officials in Rangamati that, while attempts to increase the recruitment of female officers have been made, there are currently only 5,000 women out of 14,000 police officers. The Special Rapporteur was concerned to hear male representatives of the police force in Khulna alleging that some victims engage in false reporting of incidents of rape or sexual assault in order to punish partners for refusing to commit to a relationship. She considers that these attitudes perpetuate stereotypes.

65. The Government of Bangladesh co-sponsors two large-scale programmes to address violence against women: a Multi-Sectoral Programme on Violence against Women under the Ministry of Women and Children's Affairs and a Joint United Nations Programme to Address Violence against Women. Under the Multi-Sectoral Programme on Violence against Women, seven One-Stop Crisis Centres have been established in public hospitals where victims receive medical, psychosocial and legal assistance. There is also a National Trauma Counselling Centre and Helpline. The Joint United Nations Programme to Address Violence against Women was designed in 2008 with a view to address violence against women through a three-tier strategy that consists of fostering the adoption and implementation of policies aimed at preventing violence and protecting victims, encouraging societal transformation to reduce violence against women and providing a comprehensive assistance package for victims.

66. The Special Rapporteur visited the One-Stop Crisis Centre and shelter run by the Ministry of Women and Children's Affairs in Dhaka. She was informed that women could stay in temporary shelters for a maximum period of six months with two children under 12 years old. The Special Rapporteur, however, received complaints regarding the living conditions, limited freedom of movement and the overall quality of services provided in the shelters. The situation of children living with their mothers in these shelters is of great concern. The Special Rapporteur was informed of cases where children were forced out of

[58] Domestic Violence (Prevention and Protection) Act 2010, sections 14–16.

[59] Fawzia Khondker, "Gender sensitive policing: Programme of Police Reform", *NIPSA Quarterly* (April 2013).

school for the entire duration of the mother's stay, without being offered any suitable alternatives.

67. In Jessore, the Special Rapporteur visited a shelter run by an NGO. She noted the limited availability of space to accommodate victims of violence and their families. The lack of availability of shelters, both State and non-State, was expressed as a major source of concern by a number of NGOs during the visit.

68. The Special Rapporteur was also concerned with the lack of guidelines to guarantee the protection of victims of violence in safe custody. According to NGO interviewees, in some criminal cases, victims are arrested together with the perpetrators and courts may issue a "safe custody" order through which women are placed in mixed jails. This is also due to the fact that at least 20 districts reportedly do not have shelters, so this form of "safe custody" is often resorted to. Activists indicated that jail officers even make up their own rules regarding the condition of these "safe custody" provisions, including the allocation of rooms and/or the visiting hours.

69. Protection for victims of acid attacks is covered by the Acid Control Act of 2002, which prescribes, *inter alia*, the provision of treatment and legal aid to victims of acid crimes, as well as the establishment of a rehabilitation centre for victims. However, in practice, there is only one burn unit located in the capital, which makes it difficult for victims living outside of Dhaka to receive appropriate and timely medical care. Most victims die as a result of septicaemia caused by severe infections. The ones who survive are left with pain, numerous and costly medical procedures, permanent disfigurement and social stigma.[60]

70. In an effort to provide better protection for victims of trafficking, the Government signed the SAARC [South Asian Association for Regional Cooperation] Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002[61] and recently enacted the Human Trafficking Deterrence and Suppression Act of 2012. In addition, the Ministry of Home Affairs has set up a task force for the rescue, recovery, repatriation and reintegration of victims of trafficking. Although the law provides severe penalties for trafficking, impunity is the norm for traffickers because of a lack of enforcement of the existing laws and policies.

C. Investigation, prosecution and punishment

71. In Bangladesh, the main challenges relating to the investigation, prosecution and punishment of perpetrators for acts of violence against women are due to the lack of: coordinated criminal justice response; expertise and adequate mechanisms to conduct credible investigations; comprehensive redress mechanisms; and understanding of the root causes and consequences of violence against women.

72. Corruption was also identified as one of the main obstacles to women's access to justice, as bribes and/or influence are often required for cases to move through the different stages of the criminal justice system. Victims and their families often have to pay bribes or use political connections to register a complaint before the police and to have investigations conducted. It is not uncommon for perpetrators to have more connections, power or

[60] Ashfaq Yusufzai, "Acid survivors say theirs is a fate worse than death", 28 June 2013. Available from http://www.ipsnews.net/2013/06/acid-survivors-say-theirs-is-a-fate-worse-than-death/.

[61] Signatories to the SAARC Convention include Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

resources than victims, which are deployed to influence the police, stall investigations or harass and pressure victims to drop charges.[62]

73. There is reportedly also a lack of basic expertise and facilities for the conduct of investigations, particularly in crimes relating to sexual violence. Police officers often fail to collect necessary evidence or deliberately destroy it. While medical examinations are supposed to be completed as soon as possible after an incident of sexual violence is reported, delays are common in conducting medical examinations, preparing the medical reports and submitting them to the competent courts. Furthermore, it is reported that victims have no guarantees that their injuries will be properly documented and reflected in medical examination reports, due to factors such as the patriarchal mindset of the police and doctors; inefficiency; lack of modern facilities; and corruption throughout the process.[63]

74. In 2002, the Ministry of Health issued a circular that set out guidelines for the medical examination of women and children victims of rape. This circular is complemented by the provisions set forth in the 2000 Prevention of Women and Children Repression Act.[64] The Special Rapporteur is concerned at the continued use of the two-finger test, also known as virginity testing, despite consensus that this test has no evidentiary value or scientific merit. These tests breach international standards on evidence gathering and further traumatize victims.[65] The Special Rapporteur welcomes the October 2013 directive from the Supreme Court urging relevant authorities[66] to show cause within four weeks as to why this test should not be declared to be without lawful authority and of no legal effect.

75. The coexistence of multiple legal orders also impacts on women's access to justice and due process. Traditional customary practices and forums of arbitration and sentencing (*salish*) prevail in rural areas as an alternative to the courts, which are seen as highly bureaucratic, overburdened with a huge backlog of pending cases[67] and costly.[68] The imposition of punishments through the *salish* system is often public, arbitrary and humiliating for the victims.

76. Given the existing challenges of inaccessibility, cost and length of court procedures, many victims and their families have opted for alternative dispute resolution (ADR). Some civil society organizations have provided valuable support by offering mediation services, particularly to rural women who are unlikely to find justice through the criminal justice system or the local *salish* system. While some of these NGOs strive to ensure that ADR allows women's voices to be adequately heard and their rights to upheld, this cannot be guaranteed in all cases, given the prevailing patriarchal and male-biased context, as well as the lack of sufficient gender-sensitive mediators/facilitators. Furthermore, it has been noted that ADR cannot help diminish domestic violence or demands for dowry, or stop

[62] Information provided by the Asian Human Rights Commission and Odhikar in the context of the Special Rapporteur's visit.

[63] *Ibid.*

[64] *Ibid.*

[65] *Ibid.*

[66] The relevant authorities include: the Secretary, Ministry of Health and Family Welfare; the Secretary, Ministry of Home Affairs; the Director General, Directorate of Health Services; and the Inspector General of Police.

[67] The Special Rapporteur was informed during meetings with several State officials that there was a backlog of more than 1 million cases.

[68] Habibul Haque Khondker, "Modern law, traditional 'Salish' and civil society activism in Bangladesh", *ISA eSymposium for Sociology* (July 2012). Available from http://www.isa-sociology.org/publ/E-symposium/E-symposium-vol-2-2-2012/EBul-Khondker-Jul2012.pdf.

perpetrators from threatening women.[69] The use of ADR does not allow for the development of positive jurisprudence for cases of violence against women. The Special Rapporteur was informed that a revision of the criminal procedure code was underway to allow the resolution of disputes through mediation by judges.

77. A number of Special Tribunals on violence against women were established to monitor the implementation of the 2000 Prevention of Women and Children Repression Act. During her visit to the Special Tribunal on violence against women in Dhaka, the Special Rapporteur was informed that one of the judges had been relocated and would not be replaced. This has had a significant impact on the number of cases being processed by the court. She regrets that she was refused an opportunity to engage with the judges during the visit. Nevertheless, she observed flaws in the protection of victims and witnesses as regards their right to a fair trial. Furthermore, a recent NGO research report points to major obstacles to justice that include stigma, lack of support, fear of reprisals and intrusive or discriminatory procedures during investigation and prosecution, including in the existing procedures for collecting medical evidence that fall short of recognized standards.[70]

78. As regards the judiciary, problems include a lack of accountability, severe backlogs of pending cases, a lack of sufficient number of judges, discriminatory and patriarchal attitudes, and the incorrect formulation of cases. The Special Rapporteur was informed of a training manual for judges and prosecutors on how to address violence against women, which was developed by the Ministry of Law, Justice and Parliamentary Affairs and the Judicial Administration Training Institute, in collaboration with the International Organization for Migration. The manual was reportedly used by the Institute in implementing a number of programmes and training sessions for judges and lawyers, and used as a reference document by other relevant stakeholders. The initiative sought to train a total of 960 judges and 320 prosecutors from all the courts of Bangladesh by June 2013.[71]

D. Provision of effective remedies including reparations

79. The Special Rapporteur notes that the provision of effective remedies involves "ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services".[72]

80. Under existing legislation, compensation can be provided only to the victims who use the formal justice system. For instance, the Domestic Violence (Prevention and Protection) Act 2010 provides that the Court may "direct the respondent to return to the possession of the victim any immovable property, her stridhan or dower or alimony, or any other marital property ... or valuable security to which she is entitled". The Act further provides that a victim may file a claim for compensation "if there is any personal injury or financial loss or trauma or psychological damage ... as a result of domestic violence".

81. The involvement of victims in the design of the reparation and rehabilitative measures is a crucial aspect of transformative remedies. The Special Rapporteur was informed that women living in various shelters are neither consulted nor included in the

[69] Debasish Kumar Kundu *et al.*, "Understanding alternative dispute resolution for the rural women in Bangladesh: some illustrations from BRAC HRLS Programme", Working Paper No. 13 (Dhaka, BRAC, 2010). Available from http://research.brac.net/workingpapers/red_wp13_new.pdf.

[70] Bangladesh Legal Aid Trust, *Draft Report of the National Conference on the Collection of Medical Evidence in Rape Cases: Practices, Procedures and Policies, 2 February 2013.*

[71] http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/bangladesh/IOM-Bangladesh-Newsletter-March-2012.pdf; http://www.lawjusticediv.gov.bd/static/projects.php.

[72] A/HRC/14/22, p. 1.

decisions concerning the types of recreational or income-generating activities provided to them.

82. During her visit, the Special Rapporteur noted the extent to which members of civil society play a role in ensuring access to justice and to effective remedies for victims of violence against women. She commends these efforts, but stresses that the Government, as the ultimate duty-bearer, retains responsibility for the fulfilment of due diligence obligations.

VI. Conclusions and recommendations

83. **The Government has undertaken a number of legal and institutional initiatives to meet its human rights obligations and address the situation of women and girls in the country. However, these have not been translated into concrete improvements in the lives of the majority of women who remain marginalized, discriminated against and at a high risk of being subjected to violence.**

84. **Many programmes and initiatives have been set up with the technical and financial support of development partners and donor agencies. Unfortunately, such programmes have not reached the majority of the population who live outside the capital; and women's access to justice and protection is still impeded by generalized impunity, limited access to services and shelters, lack of or insufficient legal representation and limited awareness of their rights. Other factors include economic dependency and societal reluctance to recognize numerous forms of violence against women as human rights violations.**

85. **It is essential that holistic solutions address both the individual empowerment of women and the social, economic and cultural barriers that are a reality in their lives.**

86. **The Special Rapporteur would like to address the following recommendations to the Government of Bangladesh:**

(a) Law and policy reform

(i) Ratify all outstanding international human rights instruments;

(ii) Expedite efforts towards the withdrawal of its reservations to articles 2 and 16.1(c) of the Convention on the Elimination of All Forms of Discrimination against Women;

(iii) Ratify International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples and the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;

(iv) Amend the Constitution explicitly to extend the application of the guarantees of equal rights between women and men to the private sphere in accordance with articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women;

(v) Amend relevant personal status laws to eliminate discriminatory provisions regarding marriage, divorce, inheritance, distribution of property and child custody; and also consider the adoption of a uniform family code;

(vi) Consider the retrospective application of the Citizenship Amendment Act 2009, so that it applies to children born before 31 December 2008;

(vii) Review and evaluate criminal and civil laws to ensure effectiveness in eliminating violence against women, and remove provisions that allow for or condone violence against women;

(viii) Take necessary steps for the full implementation of the National Women's Development Policy 2011 and empower the Ministry of Women and Children's Affairs and departments at the local level with sufficient financial resources and technical expertise to carry out their mandate;

(ix) Strengthen the independence of the National Human Rights Commission in accordance with the Paris Principles and ensure that the nomination and selection process is fair and transparent;

(x) Establish an independent National Women's Commission mandated to promote and protect the rights of women. This Commission should be equipped with sufficient human, technical and financial resources to fulfil its mandate;

(xi) Enact legislation on sexual harassment on the basis of the directives of the Supreme Court of Bangladesh;

(xii) Strengthen the implementation of relevant legislation applicable to violence against women, and ensure that appropriate sanctions are imposed on perpetrators and State agents who fail to protect and prevent;

(xiii) Strengthen cross-border cooperation with neighbouring countries and fully implement the provisions of relevant SAARC conventions;

(xiv) Take urgent legislative measures to prohibit early and forced marriages and other practices harmful to the well-being of women and girl children;

(xv) Ensure that persons with disabilities have access to disability-friendly services and opportunities;

(xvi) Establish and/or strengthen existing monitoring mechanisms to ensure that female workers are protected from all forms of exploitation, particularly those working in the informal sectors. Hold businesses accountable for practices that negatively impact the health, well-being and security of workers;

(xvii) Create a centralized digitalized database on migrant workers to ensure the registration of all labour migrants and ensure their access to basic rights, including healthcare and contractual rights for seasonal jobs;

(xviii) Ensure that all police stations and tribunals are staffed with professionals who have received training on women's human rights in general and violence against women in particular;

(xix) Eliminate the practice of safe custody in prisons and other institutions and establish programmes to guarantee long-term rehabilitation and housing for victims of violence who do not have the support of their families;

(xx) Take effective measures to ensure that services provided to victims of violence, including those living in refugee camps, are in compliance with international standards;

(b) Accountability: take effective measures to ensure access to justice and effective remedies for all women and girl victims of violence, in particular:

(i) Ensure that all cases of violence against women are dealt with by formal judicial mechanisms so that victims can access effective remedies. Empower relevant law enforcement agencies to respond promptly to incidents of violence against women;

(ii) Take effective measures to ensure that the right of the victim to speak to female officers is respected;

(iii) Take effective measures to ensure the fast and efficient management of cases;

(iv) Ensure that all incidents of violence against women are effectively investigated by the police and that the perpetrators are sanctioned in proportion to the severity of their crime;

(v) Develop mechanisms to ensure a holistic, coordinated and sustained response to violence against women in order to apprehend, prosecute and convict offenders, contribute to the health and safety of the victim, and prevent revictimization;[73]

(vi) Ensure that protection measures are put in place to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process and ensure that witness and victim protection programmes are established;[74]

(vii) Ensure that procedures and complaint mechanisms are accessible to women who are victims of violence and their family members and other witnesses, without fear of reprisals;

(viii) Allocate adequate human, technical and financial resources to ensure that police officers, prosecutors and criminal justice officials can fulfil their mandate and ensure fair and equitable distribution of resources across the country;

(c) Societal transformation, including awareness-raising, addressing gender stereotypes and women's empowerment:

(i) Design and launch targeted awareness-raising campaigns to educate and change the mindsets and attitudes through all available means including schools, the media, community and religious leaders;

(ii) Train and sensitize relevant actors on issues related to women's rights in order to contribute to changing the predominant social and cultural beliefs and attitudes that are harmful to women;

(d) Statistics and data collection:

(i) Establish a standardized system for data collection and analysis, disaggregated by sex, race, age, ethnicity and other relevant characteristics, in order to understand the magnitude, trends and patterns of violence against women;

(ii) In cooperation with civil society organizations and relevant stakeholders, develop monitoring and evaluation tools to assess progress made in eradicating violence against women, as well as to integrate such tools in the country's periodic demographic and health surveys;

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[73] See A/RES/65/228.

[74] *Ibid.*

(iii) Conduct studies to assess the scope of violence against women in cooperation with relevant research institutions, civil society organizations and United Nations agencies.